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J. EDWARD SCHWARTZ  
CLERK OF DISTRICT COURT  
WISCONSIN

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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NEIL GAIMAN, a resident of Wisconsin,  
and MARVELS AND MIRACLES, LLC,  
a Wisconsin Limited Liability Company,

Plaintiffs,

vs.

Case No. 02-C-0048-S

TODD McFARLANE, a resident of Arizona,  
TODD McFARLANE PRODUCTIONS, INC.,  
an Arizona corporation,  
TMP INTERNATIONAL, INC.,  
a Michigan corporation,  
McFARLANE WORLDWIDE, INC.,  
a Michigan corporation,  
and IMAGE COMICS, INC.,  
a California corporation,

03-1461

Defendants.

=====

VOLUME I

Deposition of:

NEIL RICHARD GAIMAN

=====

U.S.C.A.—7th Circuit  
FILED

SEP 13 2002

CLERK

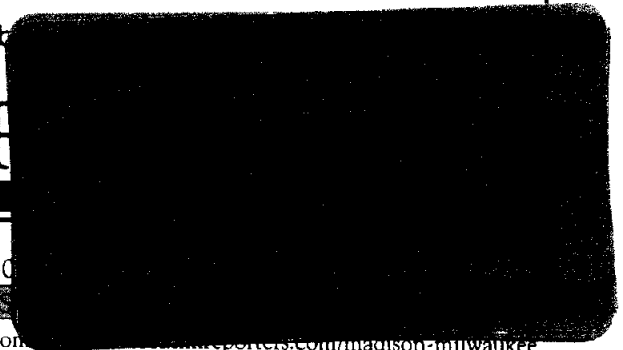
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Date: Monday, June 24, 2002

Time: 9:05 o'clock a.m.



03-1461-D06



I N D E X

<u>Exhibits Nos.:</u>	<u>Page</u>
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DEPOSITION of NEIL RICHARD GAIMAN,  
a witness of lawful age, taken on behalf of the  
defendants in the above-entitled cause, wherein NEIL  
GAIMAN, et al., are the plaintiffs and TODD McFARLANE, et  
al., are the defendants, pending in the District Court of  
the United States for the Western District of Wisconsin,  
pursuant to stipulation, before HEIDI L. DAVIS, a Notary  
Public in and for the State of Wisconsin, at the offices  
of LaFollette, Godfrey & Kahn, Attorneys at law, One East  
Main, Madison, Wisconsin, on June 24, 2002, commencing at  
9:05 o'clock a.m.

A P P E A R A N C E S

ALLEN A. ARNTSEN and JEFFREY A. SIMMONS,  
FOLEY & LARDNER, Attorneys at Law  
150 East Gilman, Madison, Wisconsin  
appearing on behalf of the plaintiffs;

KENNETH F. LEVIN,  
Attorney at Law, 20 North Wacker Drive,  
Suite 2200, Chicago, Illinois, also  
appearing on behalf of the plaintiffs;

1 APPEARANCES (Continued)

2 PETE SALSICH, III,  
3 BLACKWELL, SANDERS, PEPER, MARTIN, LLP,  
4 Attorneys at Law, 720 Olive Street,  
Suite 2400, St. Louis, Missouri,  
appearing on behalf of the defendants;

5 TODD G. SMITH and GABRIEL S. GROSS (a.m.),  
6 LAFOLLETTE, GODFREY & KAHN,  
7 Attorneys at Law, One East Main Street  
Madison, Wisconsin, also appearing on  
behalf of the defendants.

8 = = = = =

9 NEIL RICHARD GAIMAN,  
10 called as a witness, after being first  
11 duly sworn in the above cause, testified  
12 under oath as follows:

13 EXAMINATION

14 BY MR. SALSICH:

15 Q Could you please state your name for the record.

16 A Neil Richard Gaiman.

17 Q And could you spell your last name for me.

18 A G-a-i-m-a-n.

19 Q And are you a citizen of the United States,  
20 Mr. Gaiman?

21 A No.

22 Q Do you reside here in the United States?

23 A I do.

24 Q And what state are you a resident of?

25 A Wisconsin.

1 Q Have you ever had your deposition taken before?

2 A No.

3 Q Let me just kind of go through some of the ground  
4 rules today. I understand you were out in Phoenix  
5 last week at the depositions of Todd McFarlane and  
6 Larry Marder. You probably observed the procedure.

7 If I could refresh your memory on a few things.  
8 As you saw, it's a question and answer process. And  
9 the court reporter here today is making a record for  
10 us. And the goal is that we get a clean record,  
11 meaning something that the lawyers can all use later  
12 in the case if need be, and it will preserve your  
13 testimony.

14 So with that in mind, I would like to make sure  
15 that we, in order to make it clean, that when I'm  
16 asking you a question, if you will wait until I finish  
17 my question and give your answer. I will do the best  
18 I can to wait until you finish your answer before I  
19 ask the next question. Is that all right?

20 A Yes.

21 Q And you have just, my next point, you are already  
22 doing it correctly, is we do need to have verbal  
23 answers to questions and more than just verbal, they  
24 actually need to be words. So things like uh-huh,  
25 uh-uh don't translate very well in the record. Is

1       that okay?

2       A   Yes.

3       Q   There will be times when all these rules break down.  
4       We start getting into a conversation, and I'm as  
5       guilty of it as the next person, so things aren't very  
6       clear, we are talking over each other. If that's the  
7       case, I may step back and go back over a few things  
8       just to make sure we have things clear. Do you  
9       understand?

10      A   Yes.

11      Q   Also, if at any time you need to take a break, just  
12      let us know, that's fine. We have got refreshments  
13      here and there is obviously restrooms.

14               I would ask you, however, if you do need to take  
15      a break, if there is a question that's currently  
16      pending, you should go ahead and give a response to  
17      that question and we will take a break afterwards.

18      A   Okay.

19      Q   Also, you have counsel here. As you probably saw last  
20      week, sometimes lawyers make objections to the  
21      questions. There may be a lot of objections today,  
22      there may not, but just so you understand, those  
23      objections that your attorney is making are in order  
24      to preserve the record.

25               A judge would later on rule on whether the

1 question was in fact objectionable. So it may be that  
2 I will change my question or it may be that I will  
3 simply ask you to go ahead and answer the question  
4 anyway.

5 And unless your attorney specifically instructs  
6 you not to answer that question, I will ask that you  
7 go ahead and answer. Do you understand?

8 A Yes.

9 Q You are certainly free to consult with your attorney  
10 about any of this. I'm not talking about keeping your  
11 attorney out of things. I just wanted you to  
12 understand the process.

13 A Okay.

14 Q You said you never had your deposition taken before.  
15 Have you ever been a party to a lawsuit prior to this?

16 A No.

17 Q Have you ever been a witness in a lawsuit of any kind?

18 A No.

19 Q What is your educational background?

20 A School, English school.

21 Q Do you have a college degree?

22 A No.

23 Q Public school, private school?

24 A English public school, which is a private school.

25 Q Did you take any college courses?

1 A No.

2 Q And I would like to ask you some questions now about  
3 your employment history. And I don't need every  
4 single job you have ever done. We only have a day.

5 And I understand that you are a writer, is that  
6 correct?

7 A Yes.

8 Q And have you been a writer -- let me step back. Maybe  
9 I can come at it this way. Since the time that you  
10 left public school, have you worked as a writer?

11 A Yes.

12 Q Pretty much nonstop that entire time?

13 A My first -- at the point where I started paying taxes,  
14 I was paying taxes, very small ones initially, as a  
15 freelance journalist, as a writer. And that's what I  
16 have been paying taxes on ever since.

17 Q And of course we are going to assume that there wasn't  
18 a five-year period where you were working without  
19 paying taxes, right?

20 A I was not -- I worked for a I think about a three-year  
21 period after getting out of school as a counselor for  
22 the Church of Scientology and was not earning enough  
23 to pay taxes during that time.

24 Q Are you still involved with the Church of Scientology?

25 A I don't understand the question.

1 Q Okay. Thank you, by the way, for telling me that,  
2 because that's something I should have mentioned  
3 before.

4 If there is a time today, and there may be many,  
5 that you don't understand my questions, please just  
6 ask me to rephrase them.

7 You stated that you spent three years,  
8 approximately three years working as a counselor with  
9 the Church of Scientology, is that right?

10 A Yes.

11 Q Were you a member of the Church of Scientology at that  
12 time?

13 A Yes, at the time.

14 Q Are you still a member of the Church of Scientology?

15 A I don't consider myself as such.

16 Q When was the first time you published any freelance  
17 writing, or maybe I should ask when was the first  
18 time, and just generally by year, that writing you did  
19 was published?

20 A In 1981.

21 Q Do you recall what that was, what the first work was?

22 A A review of a 10cc concert, I believe.

23 Q And was that with a newspaper?

24 A Yes.

25 Q Did there come a time in your employment or in your



1 career as a writer that you began writing in the comic  
2 book industry?

3 A Yes.

4 Q When was that?

5 A 1986, although I had begun writing comic scripts which  
6 were later published in comics form in 1985.

7 Q So mid eighties you began writing comic scripts, is  
8 that correct?

9 A Yes.

10 Q And in 1986, was that the first time one of your comic  
11 scripts was published in comic book form?

12 A Yes.

13 Q Do you recall what comic that was?

14 A There were a couple that were more or less  
15 simultaneous. It would either have been 2000 A.D. or  
16 it would have been Knock About Comics, Outrageous  
17 Tales from the Old Testament, which was a bible comic.

18 Q You said 2000 A.D. Was that the title of a comic book  
19 series?

20 A It's an English weekly comic, an anthology comic, and  
21 they ran a series called Future Shocks, which were  
22 three, four, five pages normally with a twist ending.

23 Q Have you gone back since we hit the year 2000 to see  
24 if you were correct in any of the predictions you  
25 might have been making back in the mid eighties?

1 A I was never really into prediction.

2 Q I guess that's a no?

3 A No, I have never gone back to check.

4 Q Just curious. Did there come a time that you began  
5 working with DC Comics?

6 A Yes.

7 Q When was that?

8 A 1987.

9 Q And how did that come about?

10 A I wanted to write for DC Comics.

11 Q Why is that?

12 A 2000 A.D. stuff that was published, I rapidly realized  
13 that they were taking all rights to the work I did.

14 Q Who do you mean by they?

15 A 2000 A.D., at that point I think it was Fleetway  
16 Publications. One had to sign over all rights and I  
17 saw stories I had written reprinted in American  
18 editions and that they gave me no copies of and that I  
19 was not paid for.

20 Q When you wrote for the comic 2000 A.D., were you paid  
21 for that work?

22 A Yes.

23 Q Were you paid a flat fee for turning in the script?

24 A Yes.

25 Q Did you sign a contract with, was it Fleetway

1 Publishing?

2 A Yes, it was a back-of-the-check contract at the time.

3 Q And did that back-of-the-check contract state that you  
4 were granting all rights in the work you were turning  
5 in to Fleetway Publishing?

6 A I no longer remember.

7 Q How do you know that they were taking all rights?

8 A Because they never paid anything else for use.

9 Q Were you finished with that?

10 A I am now.

11 Q Did you ever complain about that to Fleetway?

12 A I spoke to Steve MacManus, the editor, who said that  
13 was how they did it and they would love to change it,  
14 but it wasn't changed. And that was the last thing I  
15 did for 2000 A.D.

16 Q When you say they were taking all rights, what do you  
17 mean by the term all rights?

18 A In this case I mean specifically reprint rights  
19 without payment.

20 Q So that I understand your answer, do you mean that  
21 Fleetway had the right to reprint your work without  
22 paying you, is that what you understand by them taking  
23 all rights?

24 A In this case.

25 Q When you say this case, we are referring to the 2000

1 A.D., correct?

2 A 2000 A.D. short stories, that was their practice.

3 Q Just so I understand, do you believe that 2000 A.D.  
4 should have had the right to do reprints but that they  
5 should have paid you for that, is that your  
6 contention?

7 A Yes.

8 Q So it was the lack of payment that was the real  
9 problem, is that correct?

10 A No other rights issues ever came up on those stories.

11 Q Did you have an understanding as to who would own the  
12 copyrights in the work that you submitted and was  
13 ultimately published in 2000 A.D.?

14 A Not at the time.

15 Q Do you now have an understanding of who owned the  
16 copyrights in the work that you submitted and was  
17 later published in 2000 A.D.?

18 A Can you give me the question again?

19 Q Sure. I asked if you had an understanding of who  
20 owned the copyrights in the work that you submitted  
21 and was later published by 2000 A.D. and I think your  
22 answer was not at the time. So I'm just simply asking  
23 at some future time did you come to have an  
24 understanding on who owned those copyrights?

25 MR. ARNTSEN: I'm just going to

1 interject here. In answering the question, to the  
2 extent that any understanding is based on  
3 communications with lawyers, don't answer as to  
4 that. If your understanding comes from sources  
5 other than communications with lawyers, then you  
6 can answer it.

7 A I washed my hands -- after doing those four, maybe  
8 five stories for 2000 A.D., I washed my hands of them,  
9 have not worked for Fleetway since, have not submitted  
10 work for Fleetway since, have not gone back and looked  
11 at, nor could I find, I suspect, these days, any  
12 pieces of paper signed with Fleetway since, and  
13 chalked them up to experience as a bad job.

14 I also have made no specific study recently of or  
15 at any time of English copyright law.

16 Q So is your answer that in fact you do not have an  
17 understanding as to the ownership of the copyrights in  
18 the work that you submitted and was later published in  
19 2000 A.D.?

20 A I suspect --

21 MR. ARNTSEN: Don't speculate.

22 Just listen to the question and answer it.

23 A No.

24 MR. ARNTSEN: I didn't know whether  
25 to instruct or kick there.

1 THE WITNESS: Kick is fine. I have  
2 never done this before.

3 Q You are doing fine. Let me just make a statement  
4 now. I'm not going to be interested in learning from  
5 you today anything that you learned from your counsel  
6 or discussed with your counsel. I'm not interested in  
7 invading the attorney-client privilege. And Allen  
8 will do a good job of making sure that I don't, even  
9 if I wander in there accidentally.

10 A Good.

11 Q So you understand that. Also, if you would bear with  
12 me a little bit and I'm going to look to you, even  
13 though you have not done a deposition before, what you  
14 have done that I have never done before is work in the  
15 comic book industry.

16 I represent Todd McFarlane. I know something  
17 about the work. I represented Image Comics. I know a  
18 little bit about their history, but I am not ever  
19 going to scratch the surface of what you know.

20 And part of what we are going to be doing today  
21 is trying to get your understanding of some events  
22 that took place as long as 10 years ago and more  
23 recently. And also, these events have to do and are  
24 intimately related with the way comic books are  
25 written and published.

1 A Understood.

2 Q So if I'm stumbling about in this area a little bit  
3 and I'm asking the wrong question, please help me  
4 out. Okay? I'm not going to ask you to do my  
5 deposition for me, but bear with me.

6 I may say some of the wrong terms. If you can  
7 correct me so that we are cleaner.

8 MR. SALSICH: And, Allen, if you  
9 can, if it comes up, I looked at Todd's  
10 transcript, I know that happened a few times  
11 there.

12 Q So the lawyers are, we are getting up to speed, but we  
13 will, I will need your help today. Is that okay?

14 A Understood.

15 Q Also, and I think this probably makes the most sense,  
16 I would like to talk primarily in a chronological  
17 fashion.

18 Obviously we are here today to discuss events  
19 that took place with you and Todd McFarlane over the  
20 creation of some issues of Spawn and things that move  
21 forward from there. And I think it makes the most  
22 sense to proceed roughly chronologically.

23 We may jump back and forth, but if I'm way off  
24 base in my time or you need to explain something that  
25 happened prior to what I'm asking about in order to

1 give a good answer, please feel free to do so and we  
2 will just work our way back around. Is that okay?

3 A Okay.

4 Q And again speaking of chronologically, why don't we  
5 start with the beginning. Will you tell me the first  
6 time you met Todd McFarlane?

7 A It was a convention called Dragoncon in Atlanta in  
8 late June or early July of 1992.

9 Q And what were you doing at that convention?

10 A I was guest of honor, or one of them.

11 Q And what were you doing in the comic book world that  
12 would have made you guest of honor at that convention  
13 in 1992?

14 A I was the writer of a comic named Sandman, which in  
15 1992 was the single-most acclaimed ongoing series of  
16 comics probably that there has ever been in terms of  
17 literary rewards received and respect in the industry  
18 and personal awards that were coming in for the comic  
19 and for the writing thereof.

20 Q Did these personal awards and the literary awards, did  
21 those translate into box office success, if you will,  
22 of the comics? Was Sandman a big seller?

23 A You -- Sandman slowly worked its way up from the first  
24 issue through to the last issue, from, on a league  
25 table of one to 500 being all the comics published



1 that month, we started probably in the low nineties  
2 and slowly over the next seven years worked our way up  
3 more or less to number one.

4 Since that time Sandman has been collected in  
5 trade paperback and has gone on to continue to sell  
6 millions of trade paperbacks.

7 Q And when you say trade paperback, so we understand, is  
8 that a collection of three, four, five, six issues  
9 that had previously been published?

10 A Yes.

11 Q You mentioned seven years. Was that the run of the  
12 time that you were working on Sandman during which the  
13 book was actually published in a monthly form?

14 A I would have to work it out exactly. I think the  
15 first issue came out in January of, I think the first  
16 issue had a January, 1999 cover date.

17 Q 1989?

18 A 1989 cover date and was actually published at the end  
19 of '88, because cover dates and time of publication  
20 are not necessarily coincident. Our last issue went  
21 on sale my recollection is Spring of '96.

22 Q Do you know how many issues overall were contained in  
23 this series?

24 A 75, plus a special.

25 Q Why did you stop putting out the Sandman issues?

1 A The story was done.

2 Q We will come back to Sandman in a little bit, but in  
3 1992, in the Summer of 1992 you were in Atlanta at a  
4 convention and this is where you met Todd McFarlane,  
5 is that correct?

6 A Yes.

7 Q Did you know of Todd McFarlane prior to meeting him at  
8 this convention?

9 A Yes.

10 Q How is that?

11 A When -- as a writer of comics, I would get the DC  
12 Comics, they send you everything they publish that  
13 month, and I saw Infinity, Inc. which was drawn by  
14 Todd, and later I remember somebody coming up to me in  
15 the DC offices showing me Spiderman number 1, which  
16 Todd drew and which people thought was very funny  
17 because the writing demonstrated that the person  
18 writing it had never written anything before. Other  
19 than that, I knew nothing about him.

20 Q So you knew Todd was a comic book artist in 1992, is  
21 that correct?

22 A Yes. I also knew that in 1992, that he and several  
23 other artists whose work I wasn't particularly  
24 familiar with because they were all Marvel people, had  
25 just left Marvel and founded a comic studio called

1 Image or a publisher called Image, which they  
2 announced at the time was all about creators' rights  
3 and treating creators well and that was -- so I knew  
4 that.

5 Q And how did you come to meet Todd at this convention  
6 in Atlanta, were you on a panel together or --

7 A No. We were signing in the same room. And in fact,  
8 the room contained the two of us, and I was signing on  
9 the left at a table and Todd was signing at the right  
10 on a table. And we had two lines and they both went  
11 out of the hall and went down the stairs and went  
12 around.

13 And Todd's line was 14-year-old boys and under  
14 and my line started with 16 years old and went over,  
15 went up from there.

16 Q Was Todd signing copies of Spiderman?

17 A Spiderman and Spawn, I think there were the first -- I  
18 think he was up to Spawn 2, maybe Spawn 3 at that  
19 point.

20 Q So Spawn had really just started at that time, is that  
21 correct?

22 A Yes.

23 Q And Image Comics had just started, as far as you knew,  
24 right around that same time?

25 A Yes.

1 Q Did you and Todd at that time talk about working  
2 together?

3 A No.

4 Q Did there come a time when you did discuss working  
5 together with Todd?

6 A In several months after that, he phoned me up and  
7 asked me if I would consider writing an issue of  
8 Spawn. And all, as far as I know the Image people,  
9 they were all artists.

10 And when Image started, they were getting a lot  
11 of stick from fans and from the comics press for being  
12 illiterate garbage, which is probably a polite way of  
13 putting the things they were saying about the comics,  
14 chiefly those written by Rob Leifeld.

15 And Todd had phoned me up and asked me if I would  
16 write one. He said what he wanted to do was go to the  
17 four best, biggest and most important writers in  
18 comics and get a guest issue written by each of them  
19 to show people that an Image comic could be well-  
20 written and to show his, I don't think he used the  
21 word humility, it's not a word that Todd would use,  
22 but that was what was being communicated, that hey, I  
23 can learn, that kind of thing.

24 Q And that he wasn't already too big to realize that  
25 other people could help out as to the quality of his

1 creation, is that right?

2 A Yes. And I also think he considered it the ultimate  
3 marketing gimmick to have good writing. He said at  
4 one point to me during this that Leifeld and co. were  
5 putting foil-embossed stamped covers on things and  
6 rolling out new number ones in order to get the  
7 numbers. And he had four issues of good writers and  
8 that was his gimmick.

9 Q So did all of this conversation take place during one  
10 telephone call, do you recall, or how did this work?

11 A There were several conversations.

12 Q Were they all on the telephone?

13 A Yes.

14 Q At some point did you agree to write an issue of  
15 Spawn?

16 A Yes.

17 Q Was that issue 9?

18 A Yes.

19 Q Did you discuss with Todd prior to actually doing the  
20 writing that was submitted for issue 9, did you  
21 discuss financial terms with Todd?

22 A No.

23 Q Never?

24 A Define never.

25 Q Never prior to submitting your work -- let me step

1 back. At some point you just testified that you in  
2 fact did write an issue of Spawn. That was issue 9,  
3 is that correct?

4 A Yes.

5 Q And I want to talk in a little bit more detail about  
6 the process of the writing, but at this point was  
7 there a time in which you actually submitted a script  
8 to Todd McFarlane or his company to be included along  
9 with artwork in issue 9?

10 A No.

11 Q You never submitted a script?

12 A A script is not printed along with the artwork in  
13 issue 9. The script is what the artist then draws  
14 up. If the script had been printed, it would have  
15 been a completely different thing.

16 Q Maybe I misspoke.

17 A I'm not being semantic here.

18 Q No, I understand. And I may have misspoke and it is  
19 important for you to correct me if I do that because I  
20 don't want to use terms incorrectly as they apply to  
21 this specific industry.

22 My question was did you in fact submit a script  
23 for use in or that later was combined with work to  
24 become issue 9?

25 A Yes.

1 Q Prior to submitting that script, at any time prior to  
2 submitting that script, did you ever discuss whether  
3 you would get paid by Todd McFarlane for your work?

4 A I don't think it came up in those terms. Can I be  
5 helpful for a minute so that we don't have to --

6 Q Sure, yeah.

7 A There was no initial discussion of payment amounts.  
8 As I recall, when I agreed to do it, I got a check and  
9 a call from Terry Fitzgerald, who worked for Todd in  
10 some capacity, which rather surprised me, but this was  
11 after I had agreed to do it, sending a check for  
12 \$10,000 for having agreed to do it and saying that  
13 when the script came in, there will be another \$10,000  
14 and then after that it would be based on royalties on  
15 -- there would be a royalty that would come in on the  
16 issue.

17 And when it became apparent that the orders of  
18 the issue were, according to them, I believe 1.1  
19 million copies, they said it was going to be around  
20 \$100,000, which would be the kind of royalty that you  
21 would have got from any publisher on those kind of  
22 sales, but that was not -- none of the financial  
23 details were discussed with Todd in those early phone  
24 calls.

25 Q So I understand correctly, I believe you said that you

1       were surprised to receive the first \$10,000 check from  
2       Terry Fitzgerald, is that correct?

3       A   Yes.

4       Q   So when you received that check from Terry Fitzgerald,  
5       had you not discussed any financial terms with Todd at  
6       that point?

7       A   No.

8       Q   You had not?

9       A   No.

10      Q   Did you call Terry and say "What's this check for"?

11      A   As I recall, it came with a note saying, which I  
12      believe we still have in the files, saying here is  
13      \$10,000, we will send you another when we get the  
14      script.

15      Q   How did the size of that -- step back. Did Terry's  
16      note suggest that that was an advance against future  
17      royalties?

18      A   Yes.

19      Q   How did the size of that advance, \$10,000, compare  
20      with advances you had received for other work you were  
21      doing at that time?

22      A   It was comparable.

23      Q   Had you ever received a \$10,000 advance for one issue  
24      of a comic book before?

25      A   If memory serves, I had received more than that for



1 Black Orchid, which was a three-issue series that I  
2 had done for DC in 1988. As a novelist, I was used to  
3 receiving, I received significantly more than that.  
4 As for a one-shot story, it was significantly more  
5 than I had received for one comic.

6 Having said that, I had not written at the time,  
7 nor had I had any interest in writing comics that  
8 would have sold in the numbers that Spawn was. And  
9 also, we were in the middle, actually that was -- we  
10 weren't even in the middle, that was the high point of  
11 -- you can actually go back and look at the graph.  
12 That was the high point of what was called the  
13 speculator boom.

14 So it was -- that payment would have been very  
15 comparable to anything coming out then as a number one  
16 or with a foil-embossed cover or anything.

17 Comics were selling 750,000 to 1.5 million  
18 copies. These days 100,000 is incredibly good. These  
19 days 40,000 is really good.

20 Q You were at Todd McFarlane's deposition last week,  
21 were you not?

22 A Yes.

23 Q And you heard Todd tell his version of the events that  
24 we are talking about, is that correct?

25 A Yes.

1 Q Do you recall Todd testifying, and I'm not going to  
2 try the exact testimony, but I have read a rough  
3 version of the transcript, do you recall Todd  
4 testifying to the effect that each of the four guest  
5 writers, and that would include you, of Spawn issues 8  
6 through 11 received essentially the same financial  
7 terms?

8 A Yes.

9 Q And that those terms were, as Todd recalled, \$100,000  
10 each?

11 A Yes.

12 Q Was there anything about Todd's -- excuse me. Let me  
13 ask you one other question.

14 Do you recall Todd testifying that regarding the  
15 financial terms between you and him for issue 9, that  
16 you wanted to make sure that you did not get any worse  
17 than the standard DC Comics deal that you were getting  
18 for Sandman at the time? Do you recall Todd  
19 testifying to that?

20 A I recall Todd approximating -- I recall Todd saying  
21 that, yes.

22 Q What I would like to ask you is now is your time to  
23 tell your version of those events. And I would like  
24 to ask you maybe just generally tell me what you  
25 understand to be all of the discussions you had with

1 Todd about money terms and then I will break it down  
2 and ask you some questions.

3 MR. ARNTSEN: And what time frame  
4 here are we talking about? I think it would make  
5 -- for instance, there are some obvious time  
6 breaks. One is before the script is submitted.  
7 One is, you know, when the comic is published and  
8 then obviously going forward on that -- just wait  
9 a second.

10 Q That's a good point. And let's try to do it this way,  
11 and this may be not always normal deposition  
12 procedure, but I think it may help this time.

13 I'm not interested in conversations that you and  
14 Todd had in 1995 or 1996 or even later about going  
15 back to what was said in 1992.

16 What I'm talking about is the discussions that  
17 you had at some point, and correct me if I'm wrong, at  
18 some point would you agree with me that you and Todd  
19 came to an agreement in and around 1992 that resulted  
20 in you submitting the script that ultimately was  
21 included in issue 9?

22 A Yes.

23 Q And that you, pursuant to that agreement, whatever it  
24 was, you received at least \$100,000, is that correct?

25 A \$100,000.

1 Q And that you, going forward from that point in time,  
2 you did receive some royalty payments as a result of  
3 the work you had done in issue 9, is that correct?

4 A I would have to check to see.

5 Q I'm not asking you to hold -- right now what you got,  
6 but --

7 A I don't know. I would have to check.

8 Q In any event, you did agree to do the work and Todd  
9 did agree to pay you something that became \$100,000,  
10 is that right?

11 A Yes.

12 Q That's the time period I'm talking about, just that  
13 agreement. And I don't know whether that agreement  
14 took place prior to doing the work or in the process  
15 of doing the work or shortly thereafter. So you will  
16 kind of need to tell me all of that discussion.

17 A Before I got the work, before I agreed to do it, there  
18 were several phone calls from Todd promising things  
19 and trying to persuade me to do it. From my  
20 perspective, there were a number of downsides to  
21 working with Todd and to working with Image.

22 They were, despite their obvious commercial  
23 success, the industry laughing stock at the time,  
24 which meant that by working with them, by putting  
25 Mr. McFarlane in the position where he could use as

1 his sole advertisement for Spawn 9, a black page with  
2 the word Gaiman written on it, that was something that  
3 was lending him cache and I had to decide whether or  
4 not I was willing to do that.

5 So Todd was very much courting me. He very  
6 wisely didn't mention money at the time.

7 What he talked to me about was showing unity with  
8 creators, sticking it to the big companies, complete  
9 creative freedom, not signing anything away, and just  
10 being, and also just pointing out that it would shake  
11 people up.

12 And I think on the second phone call, when I was  
13 still wavering, he also said "Okay, you know, I think  
14 I have got Alan now where I have got Alan and I think  
15 Dave Sim and Frank Miller are going to say yes. Come  
16 on, it's the big four, you can't be left out." And  
17 those were the things that he used to persuade me.

18 I remember him offering complete creative  
19 freedom. The phrase he used was "You can have 22  
20 pages of Spawn reading the newspaper for all I care.  
21 You can make up his past, you can do whatever you  
22 like, you have complete creative freedom." And I said  
23 yes in the end.

24 Money was not discussed. The point money was  
25 discussed was after that first check came in with a

1 little note from Terry Fitzgerald after I had done the  
2 first, my first sort of brainstorming. I had just  
3 brainstormed, said here is an idea, here is an idea,  
4 here is an idea and sent it off to them. And I got  
5 this check.

6 And the next time Todd phoned, I said "By the  
7 way, you know, you sent me a check, you haven't sent  
8 me any kind of contract." And Todd said "We don't  
9 send contracts, we treat you better, you know, it's  
10 just that's not how we do business, we don't do  
11 contracts, but we will treat you" -- he said "But I  
12 will tell you what, I will treat you better than DC  
13 ever would with their contracts." And that was the  
14 sum total of it.

15 And I thought okay. And I sent my agent,  
16 Merrilee Heifetz, my literary agent, her share of the  
17 money, her 10 percent.

18 And she phoned me up and said "Where is the  
19 contract that goes with this?" And I said "There is  
20 no contract. Todd has said he is going to treat me  
21 better than anybody would with a contract."

22 And she said "You trust him?" And I said "Yeah,  
23 he seems like a very good guy on the phone and he is  
24 not asking me to sign anything away."

25 So obviously I trusted him. And that was where

1 we got up to at that point and that was the entire  
2 conversation about money.

3 Once the orders started coming in on these books,  
4 Spawn from what, this is -- I don't know if this from  
5 personal knowledge, but this is what Todd told me at  
6 the time, the orders from Spawn, for Spawn 6 or 7 were  
7 down to about 600,000 copies.

8 And with the Alan Moore issue, they went up to  
9 about 1.2 million. And for me they were about 1.1  
10 million. So they doubled as a result of the gimmick.  
11 And Dave Sim came in at about 800,000 and Frank  
12 Miller's was up there around a million.

13 And he decided to just, said "I'm just giving you  
14 all \$100,000." And this was after the orders had  
15 started coming in and he saw what was actually  
16 happening. And he said "I'm just going to give you  
17 all \$100,000 rather than do the sums, so you have each  
18 got a round number and you can do with it what you  
19 will."

20 And I did the sums in my head, figured 1.1  
21 million, 195 comics, 100,000 seemed about comparable  
22 to the kind of money I would be getting from DC, if I  
23 decided to write a number one for them at that point  
24 and, yeah, left it about there.

25 I had recently done, about that time, I did

1 Sandman number 50, our 50th anniversary edition, which  
2 came out with a special cover, extra length issue, and  
3 that at the time had sold over a quarter of a million  
4 copies. So, you know, you were looking at a 30,  
5 \$40,000 royalty check on that. So it was definitely  
6 comparable.

7 MR. ARNTSEN: Can we take a quick  
8 break here?

9 MR. SALSICH: Sure.

10 (A short recess is taken)

11 Q Mr. Gaiman, before we took a break, we were talking at  
12 some length about your agreement with Todd McFarlane  
13 that led to your work on issue 9 on Spawn. Do you  
14 recall that conversation?

15 A Yes.

16 Q And I want to break down and just ask you a couple  
17 follow-up questions about what you just testified to.  
18 First of all, you were having your conversations with  
19 Todd McFarlane during this time.

20 Did Todd McFarlane explain to you that he was  
21 speaking on behalf of a company he had formed?

22 A No.

23 Q Did you ever discuss any of the corporate structure  
24 involved with Todd and Image Comics or Todd McFarlane  
25 Productions or anything like that?



1 MR. ARNTSEN: Ever? What time  
2 period?

3 Q He has got a good point. Let him make those  
4 objections even though if you and I think we  
5 understand each other, it's important to make sure we  
6 do clarify the record.

7 Again, we are talking about the time frame  
8 between your meeting Todd McFarlane in Atlanta in the  
9 Summer of 1992 and the time that Spawn issue 9 hits  
10 the newsstands.

11 A He told me that Image Comics was about creators'  
12 rights, that the analogy that he would use, that DC  
13 and Marvel were the plantation owners and they were  
14 the slaves who left the plantation and started a free  
15 land, that, you know, from the first he explained that  
16 Image would treat me better and treated its creative  
17 people better than DC or Marvel ever did and that, and  
18 I remember at one point in there he even offered me my  
19 own Image comic if I wanted one under him.

20 I remember he explained that the five  
21 shareholders, or possibly six shareholders, there was  
22 one guy who was sort of graying out on the edges and I  
23 don't know if he ever did anything, who left early on,  
24 but they could bring comics to the table and they  
25 would come out with the Image I on them, which meant

1 you would sell at least over half a million copies.

2 If I wanted to do one of those, I could just find an  
3 artist and go for it. So those were the kind of  
4 things that were being said.

5 Q Did you understand that you were making an agreement  
6 with Image Comics when you did Spawn issue 9?

7 A I understood that I was talking to Todd McFarlane who  
8 wanted me to write an issue of his comic which was  
9 being published by Image. I assumed that Todd had an  
10 agreement with Image. And as he kept telling me, you  
11 know, he was part of Image and the Image I was very  
12 important to him, the logo.

13 Q Did Todd ever tell you that he had formed a company  
14 called Todd McFarlane Productions?

15 MR. ARNTSEN: Again ever?

16 MR. SALSICH: Same period we were  
17 talking about.

18 MR. ARNTSEN: '92 to '93 is what we  
19 are talking about?

20 MR. SALSICH: Correct.

21 MR. ARNTSEN: Up to '93?

22 Q Let me ask a clean question again. Assuming the same  
23 time frame we have been discussing, 1992, 1993, at any  
24 point during that time did Todd McFarlane tell you he  
25 had started a company called Todd McFarlane

1 Productions?

2 A No. Phone calls from Todd would begin "Hey, this is  
3 the Todd-meister," or "Yo, it's Toddy," not this is  
4 Todd McFarlane representing Todd McFarlane Productions  
5 or similar. I don't remember Todd ever mentioning  
6 Todd McFarlane Productions.

7 My understanding was that I was, he was the  
8 artist, I was the writer and it was two creative  
9 people getting together.

10 Q Who did you understand to be the person or the party  
11 that paid you \$100,000?

12 A Todd.

13 Q Not Image Comics?

14 A Todd was one-fifth of Image Comics.

15 Q You are aware that people could be one-fifth of one  
16 company and one-tenth of another company?

17 A Yes, but he was one-fifth of the company that it was  
18 coming out. Todd was talking about Image all the  
19 time, you know, bringing it out as an Image comic. He  
20 was definitely representing himself to me on the phone  
21 as somebody to whom the success of Image Comics was  
22 absolutely vital.

23 And I knew that my comic was being published by  
24 Image Comics. It had that great big Image I on the  
25 cover. Beyond that --

1 Q I understand all that. What I'm really just trying to  
2 get to is in the complaint that you have filed in this  
3 action, you have named Todd McFarlane as an individual  
4 as a defendant, you have named Todd McFarlane  
5 Productions, Incorporated as a defendant, you have  
6 named TMP International, Inc., you have named  
7 McFarlane Worldwide, Inc. and you have also named  
8 Image Comics, Inc. as defendants. Are you aware of  
9 that?

10 A Yes, I am.

11 Q One of the claims that you make in your amended  
12 complaint in this lawsuit refers to what has been  
13 called a, excuse me, the 1992 agreement?

14 A Uh-huh.

15 Q Okay. Are you -- do you recognize that?

16 MR. ARNTSEN: Just to interject  
17 here, as you know, counsel drafted the complaint.  
18 So again, to the extent you are talking about  
19 facts and using the complaint as references for  
20 that, that's fine, but it's a legal document.

21 Q Absolutely, I understand that. And I'm not going to  
22 try to make you make statements that I'm later going  
23 to argue are legal conclusions, if there is anything  
24 particularly noteworthy about something you may have  
25 used in a heading.

1 I'm simply going to ask you about some facts.  
2 You or together with your counsel have alleged two  
3 agreements that you have with Mr. McFarlane and/or  
4 some of the other defendants, both of which you claim  
5 have been breached. And that's the reason for this  
6 lawsuit, is that correct, or one of the reasons?

7 A It is.

8 Q One of those agreements took place in 1992, is that  
9 correct?

10 A Yes.

11 Q And one of them took place in 1997, is that correct?

12 A Yes.

13 Q I want to focus right now on what we at least today  
14 will hope understand is the 1992 agreement, correct?

15 A Yes.

16 Q And in 1992 the only agreement that you have testified  
17 to so far with Todd McFarlane is the one that led to  
18 you writing issue 9 of Spawn, is that correct?

19 A Yes.

20 Q And I'm doing that primarily for purposes of narrowing  
21 our discussion to the 1992 agreement. Maybe it's  
22 easier if I say regarding the 1992 agreement, we will  
23 understand what we mean, rather than trying to get at  
24 a particular time frame. Is that okay?

25 A That's good.

1 Q If at some point I use that term and you say well,  
2 I've got to explain it by going forward to 1994, '95,  
3 please do so. Okay?

4 A Okay.

5 Q All right. And my question is with whom did you enter  
6 into the 1992 agreement?

7 MR. ARNTSEN: Object to the extent  
8 it calls for a legal conclusion, but answer with  
9 regard to your understanding.

10 Q Certainly. What is your understanding of who were the  
11 parties to the 1992 agreement?

12 A Me and Todd.

13 Q Just Todd McFarlane the individual?

14 A I didn't know -- I think that's a legal conclusion.  
15 He didn't represent himself to me specifically as I am  
16 now talking -- when I saw him do his deposition the  
17 other day, he would quite frequently say things like  
18 "Now, at that point I, and I'm speaking here as Todd  
19 McFarlane Productions."

20 He didn't do any of that stuff to me on the  
21 phone, but the -- and I felt that I was talking to  
22 somebody who was wearing, in terms of the hats that he  
23 was wearing at the time, there was Todd the artist,  
24 who was going to be drawing my comic, there was Todd  
25 the creator and ongoing controller of Spawn, the

1 comic, and there was definitely Todd as one-fifth of  
2 the Image partnership.

3 This was being seen -- I wasn't just writing a  
4 comic for Todd McFarlane. I was writing -- it was  
5 very important to Todd that I was writing an Image  
6 comic. That was repeated several times, that, you  
7 know, he didn't phone and say "I, Todd McFarlane, have  
8 been taking hits as a bad writer."

9 In actual fact, by the point that he got -- well,  
10 I mentioned earlier that he was laughed at for  
11 Spiderman number 1. By the time he got to Spawn, he  
12 was, you know, approaching competency and, you know,  
13 was competent.

14 It was the other guys who were getting -- it was  
15 Image Comics as a generality, not Todd, that was  
16 getting the shit for bad writing and I -- which was  
17 one reason for coming to me, getting one of the four  
18 most respected writers in comics at that point to come  
19 in and write an issue, have an Image comic.

20 Q Now, you testified before that at the time you agreed  
21 to do the writing for issue 9 of Spawn, and I want to  
22 focus our time now more narrowly in the time that you  
23 entered into what we now will call the 1992  
24 agreement.

25 A Uh-huh.

1 Q Do you understand that at some point in time you and  
2 Todd reached an agreement that led to you writing  
3 issue 9?

4 A Yes.

5 Q That's what I want to focus on, at that point in  
6 time. And I don't know exactly when that is, so you  
7 may have to tell me.

8 A Okay. Todd phoned me up, Todd gave me a bunch of  
9 reasons for writing it. I said I would think about  
10 it.

11 Todd phoned me up again. Todd gave me a bunch  
12 more reasons for writing it. These would have  
13 included, well, these did include at that point it  
14 wasn't treating you better than DC would, that was a  
15 little way after, but at that point it would have  
16 been, you know, we will take care of you better than  
17 any of the big companies, this is all about creator  
18 rights, it's all about creators banding together, you  
19 know, we have to do this to show -- and respect.

20 Respect was one of Todd's things that he kept  
21 talking about. He specifically mentioned his upsets  
22 with Marvel and why he left, which is they had foreign  
23 reprints of his stuff he didn't get paid for. They do  
24 T-shirts that he never got, posters that he never got,  
25 he wouldn't -- he didn't get a share of.



1 He talked about a character called Venom, who I  
2 don't know very much about, and I don't know if it was  
3 somebody he created, but he was saying he didn't get a  
4 share of the stuff, and over at Image it wasn't going  
5 to be like that.

6 This was about respect, and that I think was the  
7 point where I went, I said yes, I will do it,  
8 understanding that this was all about respect.

9 And I remember during that period, I don't  
10 remember whether it was after I had agreed or after I  
11 had said yes that first time, but before he said the  
12 better than DC thing, when I had asked for a contract,  
13 or whether it was even before that, he had Terry  
14 Fitzgerald send me the rough draft of his Comics  
15 Journal interview, he did this interview with The  
16 Comics Journal, and sent me a bunch of interviews by  
17 Todd in which he was just talking about, you know, the  
18 respect that people didn't get in comics and how the  
19 end of the day he left Marvel because it got down to  
20 Spiderman T-shirts with his images on and he got  
21 nothing, he didn't even get copy of the T-shirt, and  
22 that was never going to happen.

23 So it was that kind of, that was -- we are  
24 talking about a conversation, a 10-year-old  
25 conversation here and several 10-year-old phone

1 conversations, but he was very, he was still very  
2 angry about the way that they had been treated at  
3 Marvel and was very adamant that Image was not  
4 somewhere where people were being treated like that.

5 Does that answer your question?

6 Q It does. And just so that I can narrow it down, so I  
7 understand again, and I want to just focus on  
8 specifically the point in which time you came to the  
9 agreement. And I think you have mentioned that it was  
10 during the process of Todd's talking to you about his  
11 reason for leaving Marvel, his reasons for starting  
12 Image with the other Image founders --

13 A Would there have been -- I mean, I know asking you is  
14 something -- but in terms of context here, you know,  
15 my agreement was, you know, at the point where I said  
16 yes, I will write an issue for you, you know, there  
17 was that as a moment of agreement, but obviously there  
18 were things beyond that.

19 I could have handed him an issue and he actually  
20 could have gone "You can't use this." We might have  
21 ended it at that point or whatever.

22 Q That's a good point. Let's break it down into two  
23 steps here.

24 A For me probably the real moment of, you know, we have  
25 separate -- because there was no contract, because

1 they declined to send a contract when asked, I felt  
2 the agreement was -- you know, I'm not sure I could  
3 draw a line in the sand and say before this there was  
4 an agreement, after this there was not an agreement,  
5 through that, you know, the agreement was much more  
6 broad and general.

7 Q Let's see if we can try to do that today a little  
8 bit. Okay. And I realize I'm asking you to go back  
9 10 years, but there was a point in time in which you  
10 agreed to do the work, correct?

11 A Yes.

12 Q And then there was a point in time when you did the  
13 work, correct?

14 A Yes.

15 Q And there was a point in time when Todd accepted your  
16 work --

17 A Yes.

18 Q -- correct? And then lastly, there was a point in  
19 time in which issue 9 was published?

20 A Was published.

21 Q And on that time frame, between item number one, you  
22 agreeing to do the work and item number two, when you  
23 did the work, you received \$10,000 in a check sent  
24 with a letter by Terry Fitzgerald, correct?

25 A Yes.

1 Q And then you did the work, correct?

2 A Yes.

3 Q And then you received another \$10,000 check upon  
4 submission of the work, correct?

5 A Yes.

6 Q And then Todd accepted the work and --

7 A Possibly the check was sent for acceptance of the  
8 work.

9 Q And doing the work and Todd accepting the work were  
10 pretty close in time, correct, you doing the work and  
11 Todd saying great?

12 A Yes. There were a couple of other things that were  
13 done in that process before we got there.

14 Q And rather than go into details in those, would they  
15 generally be described as somewhat of an editor-writer  
16 function, I mean, he may have suggested oh, what about  
17 this or you may have discussed doing something, was it  
18 that sort of thing that happened between there or --

19 A Todd didn't suggest things. Todd kept repeating "Hey,  
20 if you want, whatever you want to do is fine."

21 Q Let me ask you this. Did Todd accept the first draft  
22 that you sent of the script for issue 9?

23 A Yes.

24 Q So that's all I'm talking about, doing the work and  
25 Todd accepting the work. So then you received the

1 \$10,000 check as part of that, as the result of that  
2 little transaction, you doing the work and Todd  
3 accepting it, correct?

4 A Yes.

5 Q And then some time between issue 9 being -- between  
6 what we have just talked about, you submitting the  
7 work and Todd saying great and issue 9 being  
8 published, in the comic book industry isn't there a  
9 step called the solicitation?

10 A The solicitation of -- yes, there is, but the  
11 solicitation was done before that.

12 Q When would the solicitation have been done?

13 A The --

14 Q Prior to you submitting the script, wasn't it?

15 A Yes. I got a call from Terry Fitzgerald saying we  
16 need something for the solicitation. And I wrote a  
17 paragraph for Terry describing that he could put in  
18 his solicitation and I spoke to Todd and told him a  
19 little bit about the issue.

20 Q And based on those conversations with Todd, maybe it  
21 was more than one or maybe it was one, and then the  
22 paragraph you sent to Terry, it was based on that  
23 information prior to you submitting a full script that  
24 Todd had to do the solicitation, correct?

25 A Yes.

1 Q And just so we are clear, what do you understand by my  
2 use of the term solicitation in this context?

3 A In this context two different things, one of which is  
4 soliciting into the trade, soliciting the book to the  
5 trade, having something to show them and tell them so  
6 that the comic stores could order.

7 Q And you referred earlier to a point in time in which  
8 the orders started coming in and it looked like yours  
9 was going to be 1.1 million and Alan's was going to be  
10 1.2, et cetera. Are those the orders coming in that  
11 you are talking about when you say the solicitation at  
12 this context?

13 A Would you like a quick 35 seconds on sequencing and --

14 Q Yes.

15 A Okay. In order to understand comics, you need to know  
16 what, that the body of the greater part of what was  
17 being sold in is being sold into something called the  
18 direct sales market. This is not -- it's not  
19 newsstands. It's not supermarkets with a stack of  
20 comics.

21 It's the dedicated comic stores that are selling  
22 to people who are coming in to buy comics. They are  
23 buying their comics exclusively through a distributor  
24 and the distributor is buying them nonrefundably from  
25 a publisher, nonreturnably.

1           The typical magazine trade, you send out your  
2           magazines, 50 percent of them will come back. When  
3           the direct sales market began, you were selling comics  
4           in nonreturnably and you were printing them to order  
5           because you give the distributor your details on your  
6           comic, he or it then brings out a catalog.

7           At the time there were two big distributors,  
8           Diamond and Capital, and several smaller ones. These  
9           days it's basically just Diamond.

10          And those phone book sized catalogs then go out  
11          to the comic stores, who look through them and go  
12          okay, well, I have got X number of people who buy  
13          Sandman, so I will order X number of Sandmans.

14          So in order to do that, you need to have material  
15          ready before the comic is, you know, in terms of you  
16          may have a three-month production cycle for a comic,  
17          but you may need your solicitation information four  
18          months before the comic is ready so that they can get  
19          it printed, so that three months before, you have that  
20          sequence.

21          Given the way that that works, you are printing  
22          to order when you print. So that's how, that's how  
23          that works, which is why you need something to  
24          solicit.

25          Now, you are soliciting to the trade at that

1 point, but the trade also is, you know, the comic  
2 store owners very well give away, sell, have out there  
3 on the front, and so on and so forth, the catalogs  
4 from the distributors. They make sure their customers  
5 know, hey, you know, I have got this thing coming up  
6 in three months' time, or you will get things, it gets  
7 even more to the point where if you are doing a  
8 lithograph or a statue or something that's going to  
9 take longer to produce, you may solicit it in six  
10 months ahead of time with information to the store  
11 owners that you are only going to be doing it to order  
12 so they better let their customers know and get orders  
13 from their customers six months ahead of time.

14 Q Because the store owners, the direct marketing to the  
15 dedicated comic stores, they are obviously taking the  
16 risk that they will buy too many of a certain issue  
17 because they cannot return it, is that correct?

18 A Exactly.

19 Q So they need to then go out and solicit orders from  
20 their customers?

21 A Yes.

22 Q Okay. And so when you earlier stated that, again the  
23 point in time we are still talking about are sort of a  
24 four-step process here, prior to issue 9 being  
25 published --



1 A Prior to it being written.

2 Q Okay. Prior to it being written, the solicitation is  
3 done?

4 A Yeah.

5 Q And as a result of the solicitation, Todd at some  
6 point is able to predict that the orders are going to  
7 be around 1.1 million of the comic, is that correct?

8 A Yes, because they need the, you know, they need the  
9 numbers in before they get the book printed.

10 Q And then it was as a result of getting the orders in,  
11 the numbers in that came from the solicitations, that  
12 Todd McFarlane stated to you and Alan and Dave and  
13 Frank that I'm just going to give you guys all  
14 \$100,000, is that correct?

15 A That was later. Initially I just remember hearing  
16 from Terry Fitzgerald, I said "What are we, you  
17 know -- this is really cool, this advance, what are  
18 we talking about, do you think, in terms of the final  
19 royalty." And he said "It looks like about  
20 \$100,000."

21 I think it was only after Alan Moore's issue was  
22 actually published that Todd turned around and just  
23 said "Hey, I'm giving you guys \$100,000 each."

24 Q It was based on, again based on what you just  
25 explained about the process, somewhere around the time

1 that Alan's issue 8 was actually published -- and  
2 Spawn is published monthly, correct?

3 A Yes, ish.

4 Q Roughly. So by the time issue 8 hits the stands or  
5 the dedicated comic stores, solicitations have  
6 probably all gone out all the way through issue 11,  
7 would that be correct?

8 A Yes.

9 Q So at some point right around that time --

10 A Yeah.

11 Q Very close in time?

12 A Right about there.

13 Q So right around that time when Alan's has come out and  
14 yours is the next to come out, Todd has got a pretty  
15 good understanding, as far as you know, about what the  
16 numbers for these four issues are going to be, is that  
17 right?

18 A Definitely, yes.

19 Q And he sees that they are all going to do great, some  
20 are a little more than the others, but says I'm just  
21 going to give you guys all \$100,000, is that right?

22 A Yes.

23 Q And as far as you know, or as far as you knew at the  
24 time, you said you did the rough calculation based on  
25 what you would have expected to receive from DC Comics

1 based on an issue that sold like yours did, like issue  
2 9 did, and figured that that \$100,000 was about right,  
3 is that correct?

4 A Yes.

5 Q And then shortly after Todd says I'm going to give you  
6 all \$100,000, is that when issue 9 was actually  
7 published?

8 A I don't recall.

9 Q Sometime around the time yours was published Todd told  
10 everybody he was going to pay them 100,000, does that  
11 sound about right?

12 MR. ARNTSEN: I'm just going to  
13 object just for a second. He is not necessarily  
14 going to know what Todd told other people. He is  
15 going to know what Todd told him. So just with  
16 that objection there for sort of clarification.

17 Q I understand the objection. Let me ask you, did you  
18 not earlier testify that Todd told everybody he was  
19 going to give them \$100,000? When I say everybody, I  
20 mean the four of you.

21 A Todd told me that he was, this was around publication  
22 as we were heading up into it, that he was going to  
23 give everybody \$100,000 as a flat check and not try  
24 and calculate anything because Todd -- and there would  
25 be no paperwork. It just made everything simpler to

1 cut a \$100,000 check. I know from conversation with  
2 Dave Sim that Dave got \$100,000 check for his issue.

3 Q And you testified before that you thought Dave Sim's  
4 issue took orders in around the 800,000 number, is  
5 that right?

6 A That is what Todd told me at the time.

7 Q Was there something else?

8 A I remember Todd explicitly saying that all of the --  
9 the 1.1 million and the 800,000 excluded newsstand and  
10 that there would be more money to come once they got  
11 their newsstand figures in during that time, but I  
12 don't have recall of seeing another check, nor did he  
13 ever mention the newsstand stuff to me again.

14 Q Is it your testimony that you did not receive any more  
15 checks or that you just don't recall for issue 9?

16 A For issue 9, yes, I never received another check  
17 specifically for sales of issue 9.

18 Q Let me ask you this, and maybe we can do it this way.  
19 I think we are very close here, but I think it will be  
20 very important to do it like this.

21 Can you tell me as you sit here today what, and I  
22 realize I'm asking you to go back to a point in time  
23 at which you reached the 1992 agreement as you have  
24 described it in your complaint, what you understood  
25 the terms of that agreement to be, what were you

1 committing yourself to do in the 1992 agreement?

2 A I was going to write him a really good issue of Spawn.

3 Q Was that it?

4 A Well, further than that, I was not being asked to sign  
5 anything away. He made it explicit this was not work  
6 for hire.

7 Q Did Todd actually use those terms?

8 A He said "I'm not asking," you know, "you don't sign"  
9 -- he said "You are not signing anything, but you are  
10 not signing anything away."

11 Q Tell me --

12 A I don't know that he said anything specifically about  
13 work for hire, but I know it's not work for hire  
14 unless you sign a specific agreement to that effect.

15 Q So I just want -- you don't recall Todd using the  
16 words work for hire one way or the other?

17 A No.

18 Q What exactly do you recall Todd saying, as close as  
19 you can remember his words, and I realize it's going  
20 back a while, but you have probably given a lot of  
21 thought in the last six, nine months now with this  
22 lawsuit, it's certainly been discussed a lot on Web  
23 sites and interviews and things like that. So to the  
24 extent that that's helped you recall the conversations  
25 you had back then --

1 A I don't understand what people discussing it on Web  
2 sites would have to do with our conversations.

3 Q Well, from what I have seen on some of the documents  
4 we have been produced and from what I have seen on  
5 your Web site, you have had some interviews and you  
6 have had other discussions I think on the Web site  
7 itself about what happened when you and Todd agreed to  
8 work together on Spawn issue 9, is that right?

9 A You would have to show me the interviews.

10 Q We may do that in a few minutes. I just got handed a  
11 stack of E-mails that were in response to your request  
12 that people send you E-mails about anything Todd may  
13 have said back in that time.

14 So my point is this. Have you had the  
15 opportunity in the last six to, let me finish my  
16 question, if I can, have you had the opportunity in  
17 the last six to nine months, and that time frame may  
18 be a little fuzzy, to give some thought to what took  
19 place back in 1992 between you and Todd?

20 A No more than I had previously, you know. It wasn't  
21 big and complicated.

22 Q What I'm trying to get to then is what was it though,  
23 and you stated that your agreement was, in 1992, your  
24 obligation under the 1992 agreement were to write a  
25 really good issue of Spawn, correct?

1 A Yes.

2 Q And nothing else, and that includes not signing  
3 anything away, is that correct?

4 A I don't see that not signing anything away was one of  
5 my obligations.

6 Q Well, you were not asked for any further obligations  
7 such as signing away anything, is that correct?

8 A Very explicitly no, yes.

9 Q Did you have any other obligations as you understood  
10 them in 1992 under your 1992 agreement?

11 A Obligations, further than writing a really good issue  
12 of Spawn at that point?

13 Q That's my question.

14 A My obligations, no.

15 Q What were, and I'm going to -- we are going to talk  
16 about Todd and not Image Comics or not anybody else,  
17 because as you have already testified, Todd didn't  
18 really talk about which hat he was wearing at that  
19 time, is that correct?

20 A Uh-huh.

21 Q As far as you knew you were entering into this  
22 agreement with Todd, is that right, Todd McFarlane?

23 A Yes.

24 Q What did you understand when you entered into the 1992  
25 agreement Todd's obligations to you to be?

1 A I understood that if he liked the issue, he was going  
2 to draw it and print it. I understood that this was  
3 not work for hire.

4 I understood that Todd would initially treat me  
5 very well as he'd kept saying and later clarified into  
6 when I actually asked for a written contract, which I  
7 was very -- which I would have liked, that no, I could  
8 trust him, but whatever happened, he would treat me  
9 better than DC. I understood that.

10 I'm trying to think of other things specifically  
11 from Todd that he would have said at the time that I  
12 would have understood.

13 Q What about financial obligations from Todd, specific  
14 financial obligations from Todd to you?

15 A Well, at the point where we were talking money, I  
16 understood he would treat me better financially than  
17 DC ever would.

18 Q Did you ever discuss with Todd what that meant,  
19 financially?

20 MR. ARNTSEN: Ever?

21 A Later, yes.

22 Q No. When later? Let's start that way. We will rule  
23 that out.

24 A 1996.

25 Q So in 1996 is it your testimony that that was the



1 first time that you talked with Todd specifically  
2 about what the financial terms were back in 1992?

3 A There may have been a phone conversation in '95, but  
4 basically, yes, 1996, when I went out to Phoenix, was  
5 the first time that we actually sat there and talked  
6 money.

7 I was concerned that toys were coming out, the  
8 Angela toys specifically, that I was getting no money  
9 for, and they had either just published or about to  
10 publish the Angela trade paperback, the first one, and  
11 I was concerned, there seemed to be no royalty  
12 provisions or anything, and wanted to find out why I  
13 was no longer getting anything.

14 And I was also concerned at that point that Todd  
15 might get -- at that point I still trusted Todd and I  
16 was rather concerned that he might either sell to  
17 Mattel or get hit by a car or something and that  
18 whoever took over from Todd would find no pieces of  
19 paper that had any kind of, that listed what my share  
20 of what I had created for him was.

21 Q So prior to, if I understand correctly, prior to  
22 possibly 1995, but maybe 1996, prior to 1995 or 1996  
23 there was never anything in writing between you and  
24 Todd that discussed royalty calculations, or any  
25 specific financial terms with respect to any of the

1 work that you had done for Todd to that point, is that  
2 correct?

3 A True.

4 Q And in 1992, when you are entering into the 1992  
5 agreement, you and Todd never discussed the financial  
6 terms that you would -- upon which you were doing the  
7 agreement other than Todd saying he would treat you  
8 better than DC Comics, is that correct?

9 A Yes.

10 Q With one addition, that he actually sent you two  
11 \$10,000 checks and then finished it off with an  
12 \$80,000 check around the time or shortly after issue 9  
13 came out, is that correct?

14 A Yes. Could we have a quick break?

15 Q Sure.

16 (A short recess is taken)

17 Q When you were working on issue 9, when you did the  
18 script for issue 9, among the people that appeared in  
19 the story in issue 9, there were three characters that  
20 you have claimed in your lawsuit were created by you,  
21 and I think Todd has agreed in his deposition that  
22 those were characters in the script that you wrote for  
23 issue 9. Do you recall the three characters I'm  
24 talking about?

25 A Of course.

1 Q One of the them is the Angela character, is that  
2 right?

3 A Yes.

4 Q Cogliostro?

5 A Yes.

6 Q And a character that later became known as Medieval  
7 Spawn?

8 A Medieval Spawn.

9 Q Okay. Let me just restate something. We have been  
10 going a couple hours. We have got kind of  
11 conversational. I have talked over you a couple times  
12 and you have talked over me, and that's natural, but  
13 if we can both try to do the best we can to wait till  
14 the other is finished, it will be a lot cleaner and we  
15 will end up doing the thing faster too. Is that okay?

16 A Absolutely.

17 Q I would like to ask you some questions about the  
18 development of those characters.

19 A Sure.

20 Q And first of all, let's just start with Angela. Where  
21 did you get the idea for Angela?

22 A I asked Todd to explain Spawn to me. And he said  
23 Spawn is an intelligible, or as best I remember, he  
24 said Spawn was a CIA operative, he is dead, he gets  
25 killed, he goes to hell. And the devil, who at that

1 point he didn't have a name for, later called him,  
2 actually Alan Moore called him the Malebolgia, has  
3 sent him back to earth with a limited power thing and  
4 he is training to be in the Army of Hell. It was very  
5 important he was part of the Army of Hell.

6 And I said to Todd "Okay. And who are they  
7 fighting?" And Todd said "I don't know."

8 And I thought about it a little. And I thought  
9 well, this wasn't talking to Todd, this was on my own,  
10 I thought well, you don't have an Army to fight  
11 librarians. If you are putting together the Army of  
12 Hell, one assumes that they are there at some point to  
13 fight the Army of Heaven, and that if you have an  
14 Army, heaven's army is worse. I thought cool, that  
15 gives me an angle.

16 And I thought well, is there any reason why the  
17 angel can't be female. They were, up to that point, I  
18 think Todd sent me three or four issues of Spawn at  
19 that point, whatever was published. There were no  
20 women anywhere in them except for Spawn's ex-wife,  
21 that I remember.

22 I thought well, let's create a fun female  
23 character who is a kick ass angel. And I thought it  
24 would be good to -- there wasn't much up until that  
25 point, Todd didn't have a lot in terms of Spawn

1 background story at that point.

2 He had his situation, CIA guy dies, goes to hell,  
3 comes back, is no longer, you know, is super powered  
4 dead thing whose life has moved on, and he had a  
5 scenario.

6 He didn't actually have -- from talking to him,  
7 it became apparent he didn't have anywhere he was  
8 going with it and he didn't have much in the way of  
9 background.

10 So I thought it would be a good thing to give him  
11 background and to do the kinds of stuff for him that I  
12 would do for me in an issue of Sandman, where I will  
13 set up, you know, you will toss out a dozen things  
14 knowing that in two years' time, or a year's time, or  
15 six years' time or whatever, you may need them.

16 Q Okay. So you conceived of the idea again building on  
17 the foundation that there was an Army of Hell, Alan  
18 Moore had started to give some identity to the leader,  
19 and you may have not even know that at that point?

20 A I think at that point I didn't know.

21 Q So you come up with the idea of the angel, is that  
22 correct?

23 A Yup.

24 Q And you wrote in your script whatever information was  
25 included at least at that time in her story, correct?

1 A There was -- yes. There was also the solicitation in  
2 which that was, if memory serves, that would have been  
3 where I named her, which was done before.

4 Q And you understood from the outset and throughout the  
5 process that Todd was going to be the artist who drew  
6 the visual image of the character of Angela, correct?

7 A Yes.

8 Q And I understand that you sent some thumbnail sketches  
9 along with your script to sort of give an idea of how  
10 it visually might lay out as the story progressed, is  
11 that correct?

12 A Yes.

13 Q But did you hear Todd testify the other day that he  
14 drew the actual character of Angela who appeared on  
15 the cover as part of the solicitation that he  
16 submitted prior to receiving your script?

17 A Yes.

18 Q Did you agree with that or is that how you recall it?

19 A Yes.

20 Q Let me ask you then about the -- another question  
21 about Angela. Then it's my understanding, we will  
22 talk a little bit more about this in a few minutes,  
23 that the Angela character sort of took on a life of  
24 her own, at least to the extent that she ended up  
25 getting her own three-issue miniseries about two years

1 later, is that right?

2 A Yes.

3 Q And you were the author of all three issues of the  
4 Angela miniseries, correct?

5 A Yes.

6 Q Two other characters that are central to this lawsuit  
7 that you have alleged were your creations in issue 9,  
8 one is Cogliostro and one is Medieval Spawn, is that  
9 right?

10 A Yes.

11 Q I would like to ask you about Cogliostro.

12 A Go for it.

13 Q Tell me how you got the idea for this character.

14 A Spawn was kind of dumb, and he was sitting, living in  
15 this alley with these bums. And Todd had this gadget,  
16 this sort of device of his power counter going down.

17 And I had to have something for him to do in the  
18 alley while he was waiting for Angela to turn up and  
19 beat him up, which means that he has to have a  
20 conversation with somebody, which means that I wanted  
21 a -- it needed to be somebody who knew a little bit  
22 more than he did, the idea being that I wanted a  
23 character who just was there in order to basically say  
24 aha, you don't know what's going on and there is all  
25 sorts of mysterious stuff and furthermore, there is

1 cool things to learn.

2 Q Sort of give a little exposition at that point about  
3 things that may come up in the future or maybe things  
4 that happened in the past?

5 A Exactly. And in the first draft of the script I  
6 called him old man. And then I thought well, let's  
7 give him a name. And I called him Count Nicholas  
8 Cogliostro.

9 I named him after the assumed name of Joseph  
10 Balsamo, who was an eighteenth century fraudulent  
11 magician, because I thought, I liked the idea of  
12 naming him after a fraud. He is an old fraud, but he  
13 is also a fraud that knows the truth.

14 Q Is that character you mentioned, the assumed name of  
15 the eighteenth century fake magician, fraud magician,  
16 you are probably more familiar with this than I am, I  
17 have seen that name in some other literary works. It  
18 popped up in last year's movie The Affair of the  
19 Necklace, which is the old story of --

20 A That's --

21 Q Is that the same character?

22 A Same guy.

23 Q So that's where you had the name and decided to be --  
24 it made some sense to draw in a name of somebody that  
25 had a fraudulent background. Were you meaning to



1       imply that this guy was a fraud as well?

2       A Well, fraudulent and magical and, no, my idea for that  
3       character, and to be honest, I have no idea how much  
4       of this Todd has or hasn't used because it's been  
5       many, many years since I have looked at a Spawn, my  
6       idea for the character that I told Todd when he asked  
7       me about him was that this guy was one of the hell  
8       Spawn from the dawn of time who had survived the --  
9       the idea was, Todd had this whole thing set up whereby  
10      the Spawns come in with a power counter and when your  
11      power counter hit zero, the devil gets you.

12             And I thought well, wouldn't it be cool if there  
13      was just one of these old guys, you know, I don't ever  
14      have to run my power counter down, I don't have to run  
15      around fighting crime, I can work other ways and he  
16      would come in sort of as Spawn's mentor wherever he  
17      needed him, just somebody.

18             Todd didn't have anybody in the series that could  
19      come in and say anything like aha, you shouldn't have  
20      done that, a little bit of wisdom over here for you,  
21      which gives you a plot. If you are writing a monthly  
22      comic, you need a character that will do that. You  
23      need something that will do that.

24             So while I had Spawn stuck in this alley with a  
25      bunch of bums and --

1 Q Let me just stop you right there. Just so I  
2 understand, do you visualize Cogliostro not so much as  
3 a character about whom the story was, as much as the  
4 plot device, to help the story move along, to help  
5 direct or lead Spawn through the path as he went  
6 forward, is that right?

7 A As an author, you can't divide characters into  
8 characters and plot devices. Characters have a  
9 function, which can be a plot device, but they are  
10 also characters.

11 His basic function was I wanted Spawn to have  
12 somebody to talk to. And I wanted Spawn to be -- I  
13 wanted Spawn to be distracted by something, by the  
14 conversation at the point where Angela comes up behind  
15 him and goes whomp, which meant that -- I had never  
16 written a fight scene. I quite liked the idea of  
17 writing a comic with shouting, hitting and running  
18 around, which is not something I had written before,  
19 but I thought okay, if I'm going to do this, it has to  
20 have shape and purpose, it has to be surprising and  
21 interesting and I need a conversation.

22 So was he created as a plot device, well, Angela  
23 was created as a plot device. Everybody is created as  
24 a plot device, they are part of the story, but yes, he  
25 had a function and I assumed that it was a function

1 that would just be the action, again, the action of  
2 leaving behind more than I was -- more than I could  
3 deal with at that point, but it would give Todd stuff  
4 that he could do stuff with.

5 Q You said that all characters are characters, some have  
6 plot device type of functions at certain times, I  
7 don't want to mischaracterize you, but is that --

8 A Well, all characters have plot device characters. The  
9 hero is the hero. He has a function in the plot. If  
10 he meets a mysterious old man who knows something  
11 gnomonic, that's a character too. He also has a  
12 function in the plot.

13 Q Would you agree with me that there are characters who  
14 are more involved in a particular issue or in the  
15 ongoing story than other characters? In other words,  
16 are there major characters and minor characters?

17 A In what story?

18 Q In any story, just as a general matter, or are all  
19 characters equal in their value to the story?

20 A You are talking to somebody who made not only a  
21 living, but got huge critical recognition out of the  
22 fact that one of the things that I would do  
23 continually in Sandman was introduce somebody as a  
24 minor character and then bring them back several years  
25 later as a major character. Characters who came on

1 for two panels would come back six years later.

2 So if you are talking about an ongoing storyline,  
3 there is no such thing as a character who will always  
4 be a minor character, because you have a story every  
5 month to fill and you are going to want to go back and  
6 use them.

7 Q In fact, wouldn't it be fair to say that only until  
8 you got to the end of the story would you be able to  
9 look back and say well, that character turned out only  
10 to be minor after all and never did come back?

11 A Yes, but the end of the story would not be the end of  
12 the issue.

13 Q Correct.

14 A The end of the story would be 10 years down the line.

15 Q I mean 75 issues as you had in Sandman. Again, you  
16 were at Todd's deposition the other day. Did you hear  
17 his description of how he ultimately, in his mind,  
18 changed the Cogliostro character in future issues from  
19 the character that appeared in your script?

20 A Yes.

21 Q Did you agree that that was an accurate description as  
22 far as you know of how Todd treated the Cogliostro  
23 character or do you take exception to something he  
24 said there?

25 A His description of me asking him what I wanted putting

1 in and him saying he needed the Cogliostro character  
2 was a lie, this anti-Moses thing. As I recall at the  
3 end of the issue, once he had drawn it, he phoned me  
4 up and he said "Hey, this Cogliostro guy, who is he?"  
5 And I said "Well, I have got this idea, you know, an  
6 old Spawn," and so forth.

7 He said "Oh, I thought he was Moses." So I drew  
8 him holding this box as if he was Moses going down,  
9 with wine\*, as if he was Moses going down from the  
10 mountain.

11 I heard Todd say he had expanded on the character  
12 and made him, he kept saying more of a Harvard man,  
13 you know. He said my guy was a lush, his guy went to  
14 Harvard, but characters do change.

15 The most significant change, at least according  
16 to the response to our lawsuit, was that Todd had  
17 changed the character's name, which Todd admitted  
18 during his deposition had occurred during a letterer's  
19 error, which changed Cagliostro to Cogliostro, and  
20 because he couldn't remember what the character's  
21 first name was, at some point later down the line when  
22 he had to give him a first name and didn't bother  
23 going back and checking. So that was what  
24 Mr. McFarlane testified to at his deposition as to the  
25 character's name.

1 Q In any event, you would agree in subsequent issues of  
2 Spawn, the character does have a slightly different  
3 name than the one you gave it, is that correct?

4 A Due to a lettering error, absolutely.

5 Q Would you agree that the character in subsequent  
6 issues has a personality that has developed in ways  
7 that were not necessarily included in your first  
8 script?

9 A All characters do that.

10 Q And so that over time, as you have described in the  
11 Sandman circumstances, a character who has a  
12 relatively minor role perhaps that might be defined in  
13 terms of numbers of panels or pages in which that  
14 character appears, at a later point in time, maybe  
15 years later, takes on a much more substantial role, is  
16 that correct?

17 A I don't understand your question.

18 Q Well, I'm just trying to understand the change process  
19 you described. You talked about Sandman. And I  
20 believe it was your testimony that there are times  
21 when you introduce a character who is minor -- and let  
22 me ask you a question right there.

23 When you used the term a minor character who  
24 later becomes a major character, do you recall that  
25 testimony?

1 A As I recall it was you that used the phrase minor  
2 character from the beginning, but yes.

3 Q Let me ask you. Is that a word we can use just so we  
4 understand what we are talking about? And use a  
5 different one if I'm using the wrong one.

6 What I'm referring to, I believe you testified  
7 that there were characters that you introduce all the  
8 time and they may not have a significant role at the  
9 time you introduce them, but that at some point in the  
10 future they come back and have a much larger role in  
11 the story, is that -- am I mischaracterizing your  
12 testimony?

13 A An example of that for me might be the angel whose  
14 name I remember possibly incorrectly as Gabrielle in  
15 issue 9. She is a minor character. In terms of issue  
16 9, there are four major characters in it, given the  
17 body of what I wrote. I wouldn't classify any of them  
18 as minor characters.

19 I would classify the major characters in what I  
20 wrote, just by allocating speaking parts, as Angela,  
21 Medieval Spawn, Spawn and Cogliostro. The minor  
22 characters would be Gabrielle and the bums in the  
23 alley. And I think that's it for characters in my  
24 issue.

25 In terms of whether any of them would become

1 important, if Gabrielle, the angel to whom Angela goes  
2 and reports at the beginning, had then gone off to get  
3 her own series or then turned up in important ways, as  
4 she did in -- I put her in my scene in 26, I used her  
5 in the Angela miniseries. That's more taking a minor  
6 character and giving them a major role.

7 Q Can you give me an example of a character in the  
8 Sandman series that was introduced in an early issue  
9 perhaps and came back to have a larger role in a later  
10 issue?

11 A Sure. I created a character called Barbie in Sandman  
12 11 or 12.

13 Q Barbie?

14 A Barbie.

15 Q Bobby?

16 A B-a-r-b-i-e, like the toy. And she was a ditsy blonde  
17 who had a boyfriend named Ken. And they just thought  
18 that was so cute. And you got to see nothing of her  
19 except that she was one of a dozen people or half a  
20 dozen people living in a big old rooming house.

21 She had this boyfriend named Ken. They thought  
22 that was cute.

23 And in one panel, maybe two panels, you saw that  
24 she had this strange dream life where she was on this  
25 odd quest with a giant dog.



1           And then in Sandman 32 I think it was, it may  
2           have been later, it may have been 34, but, you know,  
3           several years later I came back and made Barbie this  
4           character who had been in a handful of panels and  
5           nothing important. She was scenery as far as anyone  
6           was concerned.

7           She got her own storyline, which was called A  
8           Game of You. And she was the protagonist. And that,  
9           for me, would be taking a minor character and putting  
10          them on stage --

11        Q   When the Barbie character got her own storyline, and  
12           she's in 32 or 34, whatever it was, issue, A Game of  
13           You, did she have character traits in that issue that  
14           were not apparent in the first issue?

15        A   Of course. Characters evolve. And if they are going  
16           to bear more weight, you are going to change them.

17           By that point she had started, she had left her  
18           husband and had started painting chessboard designs on  
19           the side of her face and went off on this strange and  
20           wonderful dream quest which was the subject of the  
21           story, but all characters change. All characters  
22           evolve over time.

23        Q   Let me ask you about Medieval Spawn, that character.  
24           When you submitted your script for issue 9, did you  
25           give that character a name?

1 A No. I just said he was -- what had happened on him is  
2 I had phoned Todd and said -- and I thought, because  
3 Todd had this whole thing with this guy in the Army of  
4 Hell. And I thought oh, okay, if you have got the  
5 Army of Hell, you don't just want one captain. This  
6 is something that the devil could have been doing for  
7 a long time. And that would give you, that would give  
8 -- and my main thing was that will give Todd a lot to  
9 play with if you get bored.

10 It's a wonderful thing not to be stuck in 1992  
11 and having to do all your stories in 1992. You could  
12 have some past. You could have some cool stuff.

13 So I phoned Todd up. I said "I have got an  
14 idea. Tell me, have there ever been any other Spawn  
15 characters in the past." And he said I don't know.  
16 And I said "Well, could there have been?" And he said  
17 "Sure, if you want it." And I said great.

18 And so that was my -- so I took that, I went  
19 okay, Spawn is in the past, what would be romantic and  
20 what would be sort of cool if I was a 12-year-old boy,  
21 because that was my sort of, you know -- a lot of what  
22 I was trying to do with Spawn number 9 was okay, so  
23 I'm 12 or 13, what would be cool to see. And I  
24 thought well, a knight in armor.

25 So let's do a Spawn who is a knight in armor, and

1 that would be fun. And she can kill him, and it will  
2 be 800 years ago and then now she is coming back to  
3 kill our guy. So he was the Spawn then.

4 Q And he just had the name -- does he have a name?

5 A I just referred to him as the Spawn.

6 Q And his costume is pretty similar to the modern day  
7 Spawn's, other than it's a suit of armor appropriate  
8 for a knight? I mean, he didn't have --

9 A Other than it's a suit of armor appropriate for a  
10 knight, and not a dark, one piece with chains, it's  
11 the same thing.

12 The idea that Alan Moore had come up with that I  
13 remember Alan telling me on the phone, I don't think I  
14 had seen Alan's issue before I got to write mine just  
15 because of the way -- the speed with which these  
16 things were being done, but I spoke to Alan and I  
17 remember Alan phoning up and saying I have got a great  
18 idea, the Spawn costume is alive.

19 Todd had asked him if he could come up with an  
20 explanation for why Todd kept forgetting and drawing  
21 different numbers of spikes and chains and things on  
22 the Spawn from panel to panel. So Alan's idea was  
23 well, the costume is alive, which I just thought was a  
24 lovely idea.

25 So I gave him -- I thought okay, we will take

1 something like what the Spawn costume is and then  
2 reconceive it as you are a medieval knight in armor,  
3 you know. He has a different -- I gave him a little  
4 back story in the thing, not much because I didn't  
5 have -- I only had 22 pages to play with, and I had,  
6 you know, he had to be dead by page 8, but I gave him  
7 a little bit of back story. You got the feeling that  
8 he had a similar kind of story to Spawn's but not the  
9 same.

10 In this case it was his sister who was somebody  
11 who -- the person who was still living who was  
12 important to him and not his wife and so forth.

13 Q Other than the description you gave of him in the  
14 script, did you write anything else down or draw any  
15 pictures of --

16 A Yes, I gave Todd my thumbnails. Sorry I interrupted.

17 Q That's okay. Other than the thumbnails and your  
18 description of the character, the medieval, the  
19 800-year-old Spawn character in the script, did you  
20 write -- did you draw any other pictures independent  
21 of the thumbnails of the Spawn character?

22 A I could conceivably have doodled them, but nobody  
23 would have seen them but me other than the thumbnails.

24 Q So your entire submission for issue 9 was made up of  
25 the script and the thumbnails you attached with it, is

1           that correct?

2           A   Yes.

3           Q   Did the Medieval Spawn character appear in issue 26?

4           A   Not that I recall.

5           Q   Did he appear in the Angela miniseries?

6           A   I think I put his helmet in there on her trophy room.

7           The only other use that I know of that's been made of  
8           Medieval Spawn was he was a number of toys, and rather  
9           to my surprise, Image put out a series with him in  
10          which I was never sent, so I never read.

11          Q   So you never brought him back in a later issue of  
12          Spawn that you worked on, is that correct?

13          A   He was dead. I killed him. The first thing I did was  
14          kill him.

15          Q   What about Cogliostro, did you ever bring him back as  
16          a character in either issue 26 or the Angela  
17          miniseries that you worked on for Spawn?

18          A   No, there was no need for him.

19          Q   So the only characters that you brought back a second  
20          time from issue 9 were Angela and Gabrielle, is that  
21          right, as far as you know?

22          A   Yes.

23          Q   And of course Spawn appears?

24          A   And Spawn.

25          Q   But Spawn was obviously created prior to issue 9, is

1           that correct?

2           A   Exactly.

3           Q   Would you agree that the character that we have been  
4           calling Medieval Spawn was a derivative work of the  
5           Spawn character, the original Spawn character?

6           A   Absolutely.

7           Q   But Angela and Cogliostro were not derivative  
8           characters, is that correct?

9           A   Yes.

10          Q   There is no earlier incarnation of either of those  
11          characters in Spawn issues 1 through 8, is that right?

12          A   Not at all.

13                               MR. ARNTSEN:  When you hit a  
14          chapter break, let's stop for lunch.

15                               MR. SALSICH:  Yeah, I'm thinking  
16          this is actually a good time.  Let's do that.

17                               (A noon recess is taken)

18                               (11:40 a.m. to 12:45 p.m.)

19          Q   Mr. Gaiman, before we took a break, we were talking at  
20          some length about what we had agreed to call the 1992  
21          agreement.  Do you recall that testimony?

22          A   I do.

23          Q   And I suppose we just, since we have all taken a break  
24          and gotten back into our conversational mode, we  
25          should remind ourselves that, for the record this

1       afternoon, and I'm going to try to move things along  
2       more quickly this afternoon with specific questions  
3       and show you some documents and so forth, if we can  
4       try to pay attention to those formalities, it will  
5       make things go faster and make a cleaner record. Is  
6       that okay?

7       A Absolutely.

8       Q And I just want to clarify a couple things that you  
9       stated. You testified, did you not, that the first  
10      time you had a conversation with Todd McFarlane about  
11      specific financial terms related to the 1992 agreement  
12      was either in 1995 or 1996, is that correct?

13     A Yes.

14     Q So at the time you were entering into the 1992  
15     agreement with Mr. McFarlane, you never discussed any  
16     particular percentage royalty rates that might apply,  
17     did you?

18     A No.

19     Q And you never discussed what would be done in the case  
20     of reprints, did you?

21     A No.

22     Q And you never discussed even the possibility of toys  
23     or action figures being created based on any of the  
24     work you were doing, did you?

25     A I remember at one point in those early days,

1 Mr. McFarlane said that he would have to trademark the  
2 characters in his name because of the toys and I  
3 didn't have -- but that I shouldn't worry about that  
4 and I said fine.

5 Q When was that conversation, do you know?

6 A That was some time in early '93. I don't remember  
7 when he got the toy company actually together. I  
8 remember it as being early '93.

9 Q Was this before or after issue 9 was completed?

10 A I don't know.

11 Q Do you recall anything else about that conversation?

12 A Just that it was in there with a lot of other stuff,  
13 but I do remember, that was the only recollection  
14 specific I have to toys of those days.

15 Q You didn't talk anything specific as to if a toy is  
16 created based on one of these characters, that you  
17 would get some percentage of the sales of that toy,  
18 did you?

19 A I remember him again saying "Hey, I'm going to look  
20 after," you know, he said I'm going to do toys and  
21 saying that he would look after me, but there was no  
22 specific figures mentioned and I assumed his good  
23 faith.

24 Q I understand. Sometimes lawyers, we've got to get to  
25 the specifics. Certainly if an understanding you have



1 generally helps us get to those specifics, please let  
2 me know.

3 The 1992 agreement that we have been talking  
4 about, was that, as far as you know, was that limited  
5 to your work on issue 9?

6 A Limited to my work on issue 9 and any use that  
7 Mr. McFarlane made of it.

8 Q Of issue 9?

9 A Yes.

10 Q What about issue 26, did you not submit some work for  
11 issue 26?

12 A Yes, and I assumed that we were in the same, having  
13 heard nothing to the contrary, I assumed we were still  
14 in the same ballpark.

15 Q Would that be true also of the Angela miniseries, the  
16 work you did on that?

17 A Absolutely.

18 Q When you were doing issue 26, was that around 1994, do  
19 you know?

20 A Around then.

21 Q And the Angela miniseries came around that same time,  
22 did it not?

23 A I wrote that stuff together. In fact, I may have even  
24 written the bit for 26 after I wrote the Angela  
25 series, just going, I really wanted -- there was a

1 little piece of bridge information that I really  
2 wanted in the storyline, which I hadn't been able to  
3 put into the Angela series because it hadn't started  
4 there and I just wanted to set things up.

5 Q And so the Angela miniseries and the work you did on  
6 issue 26, those would have been 1994?

7 A Yes.

8 Q Does that sound right? So in any event, prior to the  
9 financial discussions you had with Todd McFarlane in  
10 1995 or 1996, correct?

11 A Yes.

12 Q And so the work you did on the Angela miniseries and  
13 the work you did on issue 26, as far as you knew, was  
14 done on the same terms as you had agreed in 1992 with  
15 Todd regarding issue 9?

16 A Yes.

17 Q When you started having the conversations with Todd in  
18 1995 or 1996 -- and let me ask you specifically. Have  
19 you had a chance, since we had this conversation  
20 earlier this morning, to determine whether your  
21 meeting with Todd in Phoenix was in 1995 or 1996?

22 A The meeting was in 1996. There may have been  
23 conversations that led to the meeting because  
24 otherwise I can't imagine, it's much more me going,  
25 you know, I wouldn't have just flown out to Phoenix,

1 to sort it out face-to-face if we haven't had phone  
2 conversations or I was obviously not satisfied with  
3 the way things were going on the phone.

4 Q When you had your meeting with Todd in 1996 in  
5 Phoenix, is it fair to say that's the first time you  
6 and Todd discussed specific financial terms that in  
7 your mind should have applied to the 1992 agreement?

8 A Yes.

9 Q At that time did you -- well, tell me at that time  
10 what you told Todd, if you can remember, that the  
11 terms should have been?

12 A Well, what was happening -- let me just preface this  
13 by what was going on at that point.

14 Q Please do.

15 A In the meantime Todd did a Medieval Spawn toy. It was  
16 one of his first rollouts of the toys. He credited  
17 me, unasked, which I thought was very nice of him as  
18 the co-creator of the character on a comic that came  
19 out with the toy and later sent me a check for  
20 \$20,000, which although it didn't come with any  
21 breakdown of how it was derived, and in fact, I think  
22 just came with a helpful note "This is for Todd  
23 because we love you," or something like that, I was  
24 told on the phone was my royalty share of the Medieval  
25 Spawn toy, which I thought was really cool.

1           And then Todd -- then I wrote the medieval, the  
2           Angela series --

3           Q   Let me stop you there if I can.  It's your  
4           recollection that the Medieval Spawn toy came out and  
5           that you received the \$20,000 check --

6           A   It was 20,000 six, there was a bunch of figures.

7           Q   Okay.  I realize that it may have a different, 20,800  
8           and something dollars and something cents, we are  
9           referring to the same the payment you received for the  
10          Medieval Spawn toys, right?

11          A   Yes.

12          Q   I want to get a timing here.  If I understood you  
13          correctly, your testimony is that those events  
14          occurred, the toy being produced and you receiving  
15          payment for it, Medieval Spawn, was prior to your  
16          writing the Angela miniseries, is that correct?

17          A   That would be my recollection.  It may have occurred  
18          about the same time.

19                It would be easy enough to check.  I mean, it  
20          will be in the documents.

21          Q   So in any event, so go on, you were saying you got  
22          this money for the toy and lead me up to of you  
23          getting to Phoneix.

24          A   So I have been paid money for the toy, don't know how  
25          it's been arrived at, but it's \$20,000 and that seems

1 a fair amount to me and Todd seems to be living up to  
2 his hey, you can trust me and I'm looking after you  
3 side of the deal.

4 Then 1995, late 1994, early 1995, the Angela toys  
5 are out. I remember being incredibly proud when they  
6 made the cover of USA Today as the most inappropriate  
7 toy of the year, according to the American Family  
8 Association. And I would hear from Todd that they  
9 were selling incredibly well and that they were  
10 incredibly popular, cool, the Angela toys.

11 And I thought great, I will get a royalty on  
12 these. Nothing ever happened, no payment ever came  
13 in.

14 I would ring Todd's people and say "Is there a  
15 payment," and they would go "Oh, yeah, yeah, don't  
16 worry about it, we are not businessmen here." Todd  
17 would say that a lot, that he wasn't a businessman, he  
18 was a creator and you just had to bear with a certain  
19 amount of disorganization and his funny way of doing  
20 things. So I waited. Never saw any royalty.

21 I had written the Angela miniseries. And the  
22 main reason I had actually written the Angela  
23 miniseries was my son, Mike, at that point was 13,  
24 going on 14, if memory serves, and he had found a copy  
25 of Spawn or he had found one of these Medieval Spawn

1 toys and said this is really cool.

2 And he started asking me, you know, "Dad, why  
3 didn't you write something I could read. I love this  
4 Spawn stuff."

5 So I found Todd and said "Okay, I think I'm -- it  
6 looks like I'm going to be writing another series for  
7 you. Let's do Angela. And let's do it as a three-  
8 issue miniseries." And Todd said great.

9 And really it was just written for Mike. The  
10 last issue, in the letter column we put a photo of his  
11 hockey team, which he loved, so --

12 Q Tell me again, so moving forward again and --

13 A Sir, I really was on the way.

14 Q I apologize for interrupting you. I don't want to --  
15 like I said, I do want to get through some things by  
16 five today.

17 A I'm sorry.

18 Q That's all right. Because it's all important. It's  
19 all part of the story. But you have got the Angela  
20 things coming out?

21 A Anyway, Angela comes out. I hear from them. Todd  
22 didn't like trade paperbacks. Todd had said to me  
23 several times just in conversation there were things  
24 he didn't like and he didn't like trade paperbacks  
25 because they weren't proper comics and he didn't trust

1       them.

2               And meanwhile, I was making a huge part of my  
3       income from trade paperbacks and saw that there was an  
4       enormous demand for them. So at one point in there  
5       they said we are going to be bringing out Angela in  
6       trade paperback. And I said great, we should work out  
7       a royalty deal on this. I said -- I was feeling less  
8       comfortable by that point with the idea --

9       Q   Let me stop you right there. You just said that you  
10       found out that they were going to do an Angela trade  
11       paperback of the three issues that you had done, is  
12       that right?

13      A   Yes.

14      Q   And you said "Great, let's work on a royalty deal," is  
15       that what you just said?

16      A   Well, I said to them what is the -- do we have a  
17       royalty deal on this. Up until that point the only --  
18       the way that things seemed to work was one would get  
19       these checks and they would say here is a check for  
20       \$800 because Todd thinks you are a good guy. And I  
21       actually saw in the press at one point an interview  
22       with Todd where he was saying no, we don't do  
23       royalties, we just send people love checks and they  
24       are better than any royalties could ever be.

25               So I didn't trust the love checks and I went out

1 to Phoenix. I talked to Todd. I do remember talking  
2 to him. I have no recollection of what the substance  
3 of the conversations were in '95.

4 Toward the end of '95 about I think I was getting  
5 a little bit testy here, I felt like there were no  
6 checks coming in, he had these things and he was not  
7 paying and there seemed to be no real effort to pay.  
8 And I was concerned that, as I said earlier, that Todd  
9 could either sell the toy business to Mattel or he  
10 could get hit by a truck and there would be no paper  
11 records of any kind of deal and I thought we needed to  
12 memorialize it.

13 Q So you thought in 1995 you have now seen the Medieval  
14 Spawn toy you got a check for, but now later there is  
15 a Angela toy that apparently is very popular, but you  
16 have not seen a check for that, is that correct?

17 A Yes.

18 Q And the Angela trade paperbacks coming out and it  
19 occurs to you that now it's time to figure out what  
20 your royalty arrangement is with Todd because the  
21 actions that Todd has taken in the last three years  
22 don't tell you what your royalty deal is, is that  
23 correct?

24 A Yes.

25 Q So then you have your meeting in 1996 --



1 A Yes.

2 Q -- with Todd and that meeting is in Phoenix?

3 A It is.

4 Q Do you recall what time of year?

5 A I think it would have been late spring, very early  
6 summer because I had just come back from England where  
7 I had made a TV show and I remember I had a tape of  
8 one of the episodes with me.

9 Q I was going to ask you if it was hot, but that really  
10 wouldn't help you in Phoenix.

11 A It was very, very hot.

12 Q Well, that tells me it was spring as opposed to hot in  
13 January. Okay.

14 Now, you are up to this meeting in late Spring of  
15 '96 and this is when you and Todd sit down and start  
16 hashing out --

17 A We sit -- we are not at this point in any way -- it is  
18 not in any way adversarial at this point. It's me  
19 going in and saying look, you said when we started  
20 this whole deal, you would take better care of me than  
21 DC did, we have to put something down on paper. You  
22 could sell to Mattel tomorrow, you could get hit by a  
23 car tomorrow, I don't trust your wife to send me love  
24 checks or to know what they are for, I have created  
25 characters for you, you are using them, if you go on

1 to do TV or movies and put them in, there is a whole  
2 other world out here that we have yet not gone into.  
3 Let's get this down on paper.

4 Q So is it correct to say that at the time you meet with  
5 Todd in Phoenix, you two do not have a deal regarding  
6 future movie rights, you do not have a deal regarding  
7 future TV rights based on the use of these characters,  
8 would that be correct?

9 MR. ARNTSEN: I'm going to just  
10 object as vague. He said in terms of the DC  
11 Comics I have a deal in terms of general terms as  
12 opposed to say five percent of this or for this.

13 Q That's fair. Let's do it this way. Let me ask you  
14 another question or two, then maybe I will hand you  
15 some documents and we can start focusing in.

16 A Okay. Shall I finish about the Phoenix meeting?

17 Q Please do.

18 A Okay. And Todd kept saying "But you can trust me and  
19 I will send you, I will send you bigger checks than  
20 you will get if you have a contract." And I said  
21 "Todd, call me silly, but I would much rather have a  
22 written contract and \$500 in royalties than \$1,500  
23 that is going to turn up on a whim and could end the  
24 moment that you decide it's not convenient."

25 And he said that he thought that was crazy and I

1 said that that was how, you know, just assume that was  
2 how I was billed. And we then wound up -- then  
3 everything ended very badly in terms of Todd had to  
4 wrap up rather quickly. Larry Marder had come out for  
5 that meeting because they just learned that Marc  
6 Silvestri had left the Image partnership that day, so  
7 they had to sort of get on the phone and try to sort  
8 that out.

9 The way it was left, ended was Todd saying "Do  
10 you trust me?" I said "I trust you completely."

11 He said "Good. Then I will work this out in a  
12 way that is going to be fine." He said "I'm really  
13 pleased you came down here. You have been completely  
14 reasonable and we will sort this out."

15 And he also said that, he mentioned to me he just  
16 bought Miracleman. And he said "What are you going to  
17 do with Miracleman? What are you thinking about."  
18 And I said "I don't know at this point."

19 And he said "Well, I have had lawyers look over  
20 the agreement that you made with Alan Moore and we  
21 think we could break it, but obviously we are going to  
22 honor it. So you have -- you know, we are going to  
23 respect your third of Miracleman, but we need to  
24 figure out what it is and it may be a bargaining  
25 chip." And I said "Well, that's fine."

1 Q Let me get this straight and we will ask some  
2 specifics. Let's go at the end. Is it your testimony  
3 that Todd first mentioned Miracleman to you when you  
4 were in Phoenix at the meeting in 1996?

5 A No, it's not. Todd first mentioned Miracleman to me  
6 when he did the Eclipse, when he bought the Eclipse  
7 assets, which I think was either some months earlier  
8 than that because he had phoned me up and asked if I  
9 knew anything about some Canadian guy who was trying  
10 to buy Miracleman alone and if I knew anything about  
11 this. And I said yes, the guy had gotten in touch  
12 with me and asked if Marc and I would be willing to  
13 continue with Miracleman if he got the rights and Todd  
14 said that he was, you know, thinking of bidding on the  
15 whole of Eclipse, or whatever, or that he had just bid  
16 on the whole of Eclipse, one of the two.

17 Q So you leave the 1996 meeting in Phoenix without  
18 specific terms as to royalty rights, is that correct?

19 A Yes.

20 Q And when I refer, when I'm saying royalty rights, you  
21 leave Phoenix in 1996 after that meeting and you  
22 still, you and Todd had still not agreed that any  
23 certain percentage of royalty should be applied to  
24 reprints or certain percentage should be applied to  
25 toys, et cetera?

1 A Todd had -- I'm sorry for interrupting.

2 Q No, go ahead.

3 A Todd had absolutely agreed during that meeting that he  
4 had said that he would treat me as well as DC or that  
5 if he had not said it, it was the kind of thing that  
6 he would have said.

7 Q So you did have an agreement that it would be as good  
8 as DC but you didn't have -- you and Todd had not  
9 discussed what as good as or better than DC meant, is  
10 that correct?

11 A I went home figuring that paperwork would be done.

12 Q But my question is up until the point when you left,  
13 if I can, okay, I realize we are having a conversation  
14 here, this is important and I want to try to get this  
15 clearly.

16 When you left Phoenix in 1996, is it accurate to  
17 say that you and Todd had still not discussed actually  
18 what it meant to be as good as DC Comics or better  
19 than DC Comics, is that correct?

20 A Yes. We had not discussed it in terms of numbers.

21 Q That's what I mean.

22 A We discussed it in terms of --

23 Q You had discussed, for example, had you not, that to  
24 be better than DC Comics meant you didn't have to  
25 assign away your rights, is that correct?

1 A That was much earlier. We didn't talk about that in  
2 '96. What we were talking about in '96 was much more  
3 just the kind of stuff -- have you read the Oakland  
4 transcript?

5 Q Yes.

6 A It was that kind of conversation, where you are going,  
7 you know, numbers are not actually being talked about  
8 except for hypothetically, but you are saying well,  
9 I'm saying look, I like it that they treat me like  
10 this, I like it that every quarter I can expect a  
11 royalty payment, I like it if they are using a  
12 character if I created, if he gets his own title, I  
13 get treated well.

14 I was a little uncomfortable at that point with  
15 the fact that they had just done these Angela, Glory  
16 or Medieval Spawn, Witchblade crossover things or in  
17 the process of doing them. And I was saying well, do  
18 I get a royalty on these.

19 And Todd was saying "I don't know how to give you  
20 a royalty, because the way it works at Image is Image  
21 is all one big family and I don't get a royalty, I  
22 just say to the guys go ahead, you can use my  
23 character and if I at some point want, I can use one  
24 of theirs."

25 So the idea of this big Image publishing family,

1 he was saying no money was actually coming back to him  
2 for Medieval Spawn, Witchblade and Angela, Glory, so I  
3 couldn't -- so he couldn't give me a share. So he  
4 would have to figure out a way to do something like  
5 that which wouldn't necessarily be financial.

6 So he might have to come up with alternatives  
7 that DC Comics couldn't have come up with, but he  
8 would try to ensure they were fair.

9 Q And you just told me a bunch there, so I'm taking a  
10 few notes as you were going.

11 A Not a problem.

12 Q All right. So then at some point after the meeting in  
13 Phoenix, you expected to hear from Todd as to his idea  
14 of what the specific numbers would be, is that  
15 correct?

16 A Yes.

17 Q And did you in fact get a proposal from Larry Marder  
18 outlining what Todd thought those numbers should be?

19 A Eventually, but that wasn't the next thing that  
20 happened.

21 Q What was the next thing that happened?

22 A The next thing that happened was I got a call from  
23 Larry saying that Todd had asked him to -- Larry was I  
24 think executive director of Image Comics at that point  
25 and he said that Todd had asked him to do the nuts and

1 bolts figure work with me and put together something  
2 that Todd would then sign off on.

3 Q So Larry began to play sort of an intermediary role  
4 between busy Todd McFarlane and busy Neil Gaiman?

5 A Incredibly busy Todd McFarlane and fairly busy Neil  
6 Gaiman. So Larry was always in the office and was  
7 available.

8 So I then photocopied a bunch of my DC Comics  
9 contracts for him. I just grabbed the nearest  
10 contracts, photocopied it, wrote a note, cover note,  
11 summarizing, you know, from the contracts roughly what  
12 the financial stakes in all this stuff was or  
13 precisely what the financial stakes in it was, but  
14 with the contracts to amplify, and faxed off a, you  
15 know, eight, 10-page fax to him.

16 Q Then did Larry respond at some time after that with a  
17 proposal from Todd?

18 A Yes.

19 Q I'm going to hand you what's been previously marked in  
20 the depositions last week as Exhibit No. 25. Actually  
21 I'm not going to hand it to you because I have got  
22 notes all over it, but I'm going to ask you to take a  
23 look at what your lawyer will hand you.

24 A My lawyer will hand me a copy.

25 Q I would like to take a look at that, if you would, and



1 tell me if you can identify that document?

2 A That would be the cover sheet, well, the first page,  
3 not the cover sheet of the fax to Larry.

4 Q And down near the lower right-hand corner, do you see  
5 some numbers that say TM 00571?

6 A Yup.

7 Q I will represent to you that this particular document  
8 was marked in I believe it was Larry Marder's  
9 deposition as Plaintiff's Exhibit No. 25. Near the  
10 top -- and this entire document is handwritten, is it  
11 not?

12 A It is.

13 Q With the exception of some fax header information at  
14 the bottom?

15 A Yup.

16 Q And near the top in the right-hand corner there is the  
17 words eight pages total. Do you see that?

18 A Yup.

19 Q Is that what you were referring to as attached to this  
20 particular document were some contracts that you  
21 grabbed that were DC contracts?

22 A Yes.

23 Q What's the date on this particular document, Exhibit  
24 25?

25 A 6 of November, '96.

1 Q So this would have been after your meeting in Phoenix  
2 and after Larry called you to say that Todd had asked  
3 him to play an intermediary role, is that correct?

4 A There was a period of time in there where I had still  
5 not got any money or anything, still not got anything  
6 back and there was dead silence from Todd after the  
7 Phoenix meeting. And I believe that my agent wrote a  
8 letter to Todd around that time, which was the point  
9 where Larry got in touch with me, Todd was no longer  
10 taking my phone calls and wasn't responding to my  
11 agent and that was when -- so we are now at -- so  
12 there was several months that went by in there with no  
13 word or response from the Todd camp and then Larry  
14 gets in touch and says "I'm going to sort it out."

15 So this would have been a fairly swift response  
16 to me from Larry's initial call.

17 Q In the first sentence it says "Dear Larry, I have  
18 grabbed a couple of contracts and have faxed to you  
19 all the relevant pages."

20 A Uh-huh.

21 Q Would this have been the first time that you supplied  
22 anybody on behalf of Todd McFarlane, Todd himself or  
23 Terry Fitzgerald or now Larry Marder, with copies of  
24 DC contracts?

25 A I don't know.

1 Q Do you recall at any time prior to the 6th of  
2 November, '96 ever showing Todd McFarlane any part of  
3 one of your DC contracts?

4 A I several times sent Todd, or sent at least Larry, I  
5 know that Todd got them because he commented on it  
6 once, my DC Comics contracts.

7 Q The entire contract?

8 A At one point, yes.

9 Q When was that?

10 A That was the letter that Melanie Cook, I forwarded  
11 Melanie a complete contract and she just sent it on to  
12 Larry when she sent the letter at the end of this  
13 saying, you know, no, we are done on your come-backs,  
14 you have to stick with this, this is the contract.  
15 She sent the entire contract. I think on this one I  
16 left out a couple of pages, just because I was trying  
17 to pick them -- pick the relevant stuff.

18 Q So my question about -- well --

19 A But as far as I know, this was probably the first  
20 time. I can't say.

21 Q What you just talked about a second ago with Melanie  
22 Cook sending a contract, that was after this, is that  
23 correct?

24 A Yes, I think this was probably the first time.

25 Q Certainly back in 1992 you hadn't taken a look at each

1 other's contracts?

2 A No, absolutely not. I might have sent him something  
3 in '95 if he asked. I don't remember what was, or  
4 even early '96, I might have well gone out to Phoenix  
5 and said here is a contract, you can keep it if you  
6 like.

7 Q I want to take you down through this real quickly.  
8 Item number 1, it says movies, audio, stage, et  
9 cetera, 15 percent of net receipts, is that correct?

10 A That's what it says.

11 Q And then the next item, item 2, retail products. And  
12 this is a little unclear to me. So if you could  
13 explain to me what is contained in item number 2?

14 A I don't know. I got it from the contract.

15 Q Well, it looks to me like, and tell me if I'm  
16 mischaracterizing this, it looks like you have three  
17 possible ways of calculating what you have marked as  
18 writer royalty?

19 A Uh-huh.

20 Q And then plus an additional two different ways of  
21 calculating a creator royalty when there are retail  
22 products, is that correct?

23 A That is what I understand, but I would have taken this  
24 from -- all I would have done on this cover note is  
25 just copy out summarizing the figures from the

1 relevant paragraph in the DC Comics thing.

2 Q So that's where all the information in this letter  
3 comes from?

4 A Yeah, and would have been, and I mean -- but the  
5 statement at the top that you have left out is the  
6 words in brief. I say "I'm faxing you all the  
7 relevant pages in brief." I was just trying to  
8 summarize it to be helpful --

9 Q No, I understand that.

10 A -- on it. So the actual document with how it all  
11 would have been done would have been attached to this.

12 Q I realize that this is just your attempt to summarize  
13 the relevant terms that you see, that you saw applying  
14 to your relationship with Todd, is that correct?

15 A Not all of them, but it was an attempt to summarize  
16 the numbers from the DC Comics contract that would  
17 have been attached.

18 Q After this meeting, or after you sent this Exhibit No.  
19 25 to Larry Marder, did you get a response from  
20 Mr. McFarlane or Mr. Marder?

21 A I got one from Larry after a while that came back with  
22 a fairly pitiful offer. I mean, it was not only not  
23 my DC deal, but it was significantly worse.

24 And I thought this is very strange and very  
25 silly. And I phoned Larry and said "Well, can you

1 explain some of this stuff to me? Can you explain how  
2 net is going to be calculated," and so on and so  
3 forth. And he said "No, I cannot. You will have to  
4 trust Todd."

5 Then he sent me another version of that with a  
6 little more information about the toys on it, and I  
7 looked at these and I thought well, these are not what  
8 has been promised and this is not -- this isn't  
9 even -- I thought we were working together.

10 The last thing Todd said is "You can trust me,"  
11 and I'm going I can trust you and so on, so forth.  
12 And now he is coming back with this is the deal and it  
13 was, you know, these two percent of net for this and  
14 half a percent of net for this. I'm going what,  
15 that's not what we are into. This is, you know,  
16 ridiculous.

17 And at that point I forwarded it to my  
18 entertainment lawyer.

19 MR. ARNTSEN: Be careful about  
20 communications with counsel.

21 A Understood. Thank you. I forwarded it to my  
22 entertainment lawyer because Mr. McFarlane was not  
23 responding to my literary agent and didn't seem to  
24 take her seriously.

25 So my entertainment lawyer then sent a letter to

1 Larry Marder as the person that had been negotiating.

2 Q Let me stop you right there. If you could take a look  
3 at a document that was previously marked in I believe  
4 Todd McFarlane's or Larry Marder's deposition as  
5 Plaintiff's Exhibit 47.

6 A Uh-huh.

7 Q And would you tell me what that is, if you know?

8 A This is a letter from Melanie Cook, my entertainment  
9 attorney, to Larry Marder.

10 Q Is this the letter that you referred to earlier from  
11 Melanie Cook in which she enclosed full copies of your  
12 relevant DC Comics contracts?

13 A She has -- there is a DC Comics contract attached, 12  
14 pages.

15 Q Is this the letter you were referring to earlier when  
16 you talked about Melanie Cook sending contracts to  
17 Todd McFarlane or to Larry Marder?

18 A Yes and --

19 Q Let me ask you a quick question before we talk about  
20 this. You testified before when you were meeting  
21 with, in Phoenix that you told Todd that you wanted, I  
22 don't know if this is the exact words that you used,  
23 but I want to see if I can characterize them, please  
24 correct me if I'm doing it wrongly, but you told Todd  
25 that you preferred regular statements, knowing when

1 the royalties were going to come and what the  
2 royalties were going to be, is that correct?

3 A Yes.

4 Q And that Todd in fact preferred a different  
5 arrangement, that he believed he would be able to  
6 treat you better if he just sent, I think the term you  
7 used before were love checks, is that right?

8 A That was what Todd said. However, for the previous 18  
9 months, no love checks had appeared.

10 Q I understand that. I'm just trying to get an  
11 understanding of the conversation you had in Phoenix.

12 A Yeah.

13 Q Is it fair to say that you understood Todd's opinion  
14 of what being better than DC was to be his sending  
15 these irregular love checks?

16 A By that point I don't think Todd -- exactly when are  
17 we talking about, because it's pretty broad?

18 Q We are in Phoenix, it's hot and you guys are having  
19 your discussion over, as you said, the lack of any  
20 love checks for a while and Angela, the miniseries is  
21 coming out. The lack of what?

22 A The lack of prediction.

23 Q Okay. So you tell Todd, and at this point Todd is  
24 still telling you he is going to take care of you, do  
25 you trust him, he is going to -- of course he said it



1 would be better than DC or I certainly would have said  
2 that, isn't that what you testified, is that those are  
3 the things that Todd was saying in 1996 in Phoenix?

4 A Yes, absolutely.

5 Q And you also testified that in Todd's view you were, I  
6 think you used the word crazy to insist on  
7 predictability and regular royalty checks and regular  
8 royalty rates, is that right?

9 A Yes.

10 Q And what I want to understand is that, did Todd tell  
11 you that he could do better for you or that you would  
12 do better if you did not insist on regular royalty  
13 amounts and instead left it up to him to send you  
14 checks when he got around to it, so to speak?

15 A I don't think he specifically said that, no.

16 Q Did you come away from that meeting with that  
17 understanding of Todd's view of the world, in other  
18 words, I think you testified that you had to convince  
19 him that I may be crazy, Todd and I may be taking  
20 less, but I want predictability, is that right?

21 A Yes, and I also, I wanted predictability and I also  
22 wanted some guarantee. At that point I still trusted  
23 Todd. I didn't trust any other entities.

24 Q I understand, because as you said before, there was  
25 nothing in writing at this point and if he sells out

1 to somebody else, all they are going to care about is  
2 paper and if there is no paper, you are screwed?

3 A Exactly. That was what started this whole thing is  
4 trying to get something down on paper.

5 Q I understand. Take a look at Exhibit 47, if you  
6 would.

7 A Yup.

8 Q In the second paragraph -- actually, take a look at  
9 the first sentence, first sentence, "This office  
10 represents Neil Gaiman and Mr. Gaiman has forwarded to  
11 me a copy of your written offer to him dated  
12 February 18th, 1997." Do you see that?

13 A Yup.

14 Q Is that the offer you were referring to having  
15 received from Mr. Marder which you said was  
16 significantly less than the terms that you had sent to  
17 him back in November?

18 A It would be one of those two faxes, yes.

19 Q The second paragraph says, if you look about three  
20 sentences down, excuse me, three lines down --

21 A Hang on a second. I have a feeling that we are just  
22 sort of starting a long questioning thing. Could I  
23 just pop out and use the toilet?

24 Q Absolutely.

25 (A short recess is taken)

1 Q I think we had gotten up to the point in time  
2 chronologically, this April, 1997 letter from Melanie  
3 Cook to Larry Marder. Do you recall our discussion at  
4 that point right before we took a break?

5 A Yup.

6 Q If you would look at the second paragraph in Exhibit  
7 47 and the third sentence, third line down which  
8 begins with the word rather, do you see that?

9 A Yup.

10 Q Could you read that sentence outloud for me, please?

11 A "Rather the characters were created pursuant," which  
12 is probably a legal term that I would want to check  
13 the meaning of, "in the terms of an oral agreement  
14 under which Mr. McFarlane agreed Mr. Gaiman would be  
15 compensated on the same terms as set forth in  
16 Mr. Gaiman's DC Comics agreement dated August 1, 1993,  
17 the DC agreement, a copy of which I have attached  
18 hereto."

19 Q And attached in fact to Exhibit 47 are two agreements,  
20 are there not, two separate agreements both with an  
21 August 1, 1993 date, is that right?

22 A Yes.

23 Q One of, the first beginning on --

24 A No. As far as I know it's one agreement. There is  
25 one signature, but one is a character equity agreement

1 and one is a contract to write 13 episodes of Sandman.

2 Q So is it your testimony that these are two parts to  
3 essentially the same agreement?

4 A Yes.

5 Q Anywhere in the documents attached to Exhibit 47 is  
6 there a signature?

7 A There is also a Schedule A royalty provisions at the  
8 back. Not on this one. It looks to me like this was  
9 Fed Ex'd -- it was faxed to them from the fax number  
10 at the bottom is the same as the fax number of my  
11 agent in New York.

12 So I assume that Melanie Cook had contacted  
13 Merrilee, my agent, for a copy of the contract and  
14 they just pulled one out of their files, which would  
15 have been a working document rather than a finished  
16 contract which would have come to me and come to DC.

17 MR. SALSICH: Could we mark this?

18 (Exhibits 57 and 58 are marked for identification)

19 Q I have just handed you two documents that we have  
20 marked for identification purposes today as Exhibits  
21 57 and 58.

22 A Right.

23 Q And could you take a look at those for a minute or  
24 two, or however long you need, and see if you can tell  
25 me what those are?

1 A These would be my finished contracts, the actual  
2 executed contracts.

3 Q And these are the executed versions of the contracts  
4 which were attached, the unsigned contracts which were  
5 attached to Melanie Cook's letter, is that correct?

6 A Yeah.

7 MR. ARNTSEN: Just make sure that  
8 it's the same dates.

9 (Witness examines documents)

10 A Well, the August 1st, 1993 one is actually the  
11 September 1st, 1992 one.

12 Q Yeah. Could you explain that to me? And what you are  
13 referring to is that on the third page of Exhibit 47  
14 is the character equity agreement dated August 1, 1993  
15 and that's the one you testified was not executed, is  
16 that correct?

17 A Yes, it's not signed.

18 Q And the agreement which we have marked as Exhibit No.  
19 57 is your executed copy of that same agreement, is  
20 that correct?

21 A Yup.

22 Q At the upper right-hand corner, the date, there is a  
23 line through August 1, 1993 and it has been changed to  
24 September 1 of 1992, is that correct?

25 A Yup.

1 Q Why is that?

2 A No idea, but that you would have to check with DC  
3 Comics. Probably, I mean, I know I'm not going to  
4 speculate, but can I offer a probably?

5 MR. ARNTSEN: Sure.

6 A My probably on that would be because the contract goes  
7 from Sandmans 50 to 73 and the contract negotiations  
8 had probably gone for a while and they probably looked  
9 back and realized that if they signed it as of August  
10 1st, 1993, I would have been without a contract  
11 between September the 1st, 1992, which would have been  
12 when probably Sandman 49 was handed in and August 1st,  
13 1993. That would be my -- it's the most logical  
14 assumption.

15 Q Do you see right here, just below the line through the  
16 date, there appears to be a handwritten initial. Is  
17 that your initial? Do you see what I'm talking about?

18 A Yeah.

19 Q To me it kind of looks like a Y, but is that NG  
20 perhaps?

21 A I think it's more likely an L for Levitz, but I don't  
22 know.

23 Q There is another one at the bottom of page 3.

24 A There is another one at the bottom. That can be NG.  
25 Well, it also looks like exactly the same as the L in

1 Levitz though.

2 Q Take a look at page 4, right above paragraph 10 there  
3 is a correction to the spelling of your agent's name  
4 and the same initials appear?

5 A Don't know.

6 Q Does that look like a correction you would have made  
7 rather than --

8 A I wouldn't have made them, my agent, I mean, they are  
9 all typed, which means that it all would have been  
10 done by the time it got to me.

11 Q Your testimony is that you are not certain as to why  
12 the date was changed, but you believe if we checked  
13 when Sandman 50 came out, that it would probably  
14 correspond to make sure it covered the entire number  
15 of issues --

16 A That would be -- that would be my best guess. All of  
17 the changes would have been made at DC and by my agent  
18 before it got to me.

19 Q I think we have just pointed out the only changes in  
20 this agreement -- well, I don't know if we pointed out  
21 the only changes in this agreement. As far as you  
22 know, and take a few minutes to look at it if you need  
23 to, is Exhibit 57 the executed signed version of the  
24 contract that Melanie Cook sent to Larry Marder on  
25 April 2nd of 1997?

1 A I have absolutely no idea. I would have to sit there  
2 and go through them. They look incredibly similar.

3 Q They are both originally dated August 1, 1993,  
4 correct?

5 A Yup.

6 Q And the reason I'm asking you this, Mr. Gaiman, is  
7 your testimony was that the letter sent by Melanie  
8 Cook attaching these agreements was, it was your  
9 position or your position through her that these were  
10 the agreements essentially that Mr. McFarlane had  
11 agreed to abide by when you guys met back in Phoenix  
12 in 1996, is that correct?

13 A Mr. McFarlane had agreed to abide by this, as I  
14 understood it, or to do better than this in 1992. In  
15 1996 we agreed that we would put in writing what the  
16 specific amounts were going to be for future  
17 generations and the McFarlane and co. would abide by  
18 those.

19 Q You testified that you never discussed any specific  
20 terms as to royalty rates, et cetera, back in 1992,  
21 correct?

22 A No. I said I would get him contracts.

23 Q So in 1996 moving on into 1997, you and Todd start out  
24 having a face-to-face meeting, eventually it becomes  
25 letter writing between you and Larry Marder and



1 finally turns into letter writing between a lawyer and  
2 Larry Marder, is that correct?

3 A No. I was talking on the phone continually with  
4 Larry.

5 Q Let me just get to my --

6 A And this was not -- I didn't see this as letters from  
7 my lawyer to Larry Marder. I saw this as I have an  
8 entertainment lawyer, Todd and Larry are paying no  
9 attention to anything they get from my agent, I will  
10 ask my entertainment lawyer to please write a letter.

11 Q I didn't mean to characterize your -- I'm not trying  
12 to characterize the tone of the letters or the tone of  
13 the conversation. I'm just trying to be accurate.

14 I want to get from you, tell me whether the  
15 language in Exhibit 57, or exhibit, the contracts in  
16 Exhibit 47, and they may not be any different from  
17 each other for the important parts, but what is it  
18 that -- where in these documents are the terms that  
19 you understand Mr. McFarlane was supposed to abide by?

20 A With the provision obviously that I'm not a lawyer  
21 and --

22 Q Sure, and I understand that, but it is your agreement?

23 A I know. Schedule A is royalty provisions. If you go  
24 to, it's at the back of Exhibit 57.

25 Q Is there a page number down at the bottom that starts

1 with a G?

2 A G 01018. And those are royalty provisions for comics  
3 sales.

4 Q And those, if you look at the second to last page of  
5 or the third to the last page of Exhibit 47, that  
6 appears to be the exact same thing, does it not,  
7 schedule A royalty provisions?

8 A Without actually sitting here and comparing them --

9 Q Take a minute or two.

10 A Would you like me to?

11 Q Yes, please.

12 A Okay.

13 MR. ARNTSEN: I guess I would  
14 object to the question. They are either the same  
15 or they are different. And I don't know what this  
16 witness trying to review them both right now and  
17 saying anything about it can add to that.

18 Q Well, I just want to -- I mean, I will tell you what,  
19 the reason I'm doing this, and in the interest of  
20 speeding this up, maybe we should take a few minutes  
21 to look at these things and if you want to do that off  
22 the record, that's fine.

23 My goal is I would like to be able to refer to  
24 one document when we start talking about the DC Comics  
25 agreement that appears throughout the complaint, as

1 the document that, as the agreement that Mr. McFarlane  
2 has allegedly breached or that contain the terms that  
3 Mr. McFarlane has allegedly breached. And so if we  
4 can refer to one of these documents in its terms, then  
5 I would prefer to do it that way other than going back  
6 and forth three or four times.

7 A In which case why don't we simply go to the executed  
8 agreements.

9 Q That seems reasonable to me. I want to make sure you  
10 are comfortable with that, if you want to talk to your  
11 lawyer about that.

12 I will represent to you I have looked at these  
13 things pretty darn closely and they appear to be just  
14 that, one is an executed version and one is an  
15 unexecuted version, but I'm not testifying. I want to  
16 make sure you are comfortable before going forward.

17 MR. ARNTSEN: Just to add to that,  
18 I haven't gone through all the documents. These  
19 are DC contracts as of certain dates and there may  
20 be other ones as of other dates, and again it  
21 sounds to me like in the discussions prior to '96  
22 and '97, it was discussed more generally between  
23 the two of them.

24 A No, I'm perfectly happy with that. And if I can just  
25 say also my guess is, as I said earlier, the only

1 reason why you have an unexecuted agreement as opposed  
2 to the executed agreement being sent to them is  
3 because that would have been what was in my agent's  
4 files and that was what was faxed over to Melanie when  
5 she wanted an example of a contract to send to them.

6 MR. SIMMONS: We are operating on  
7 the assumption that these contracts are identical?

8 Q For relevant purposes, and I will -- let's refer to  
9 Exhibit 57, which actually has an executed date of  
10 September 1, 1992 and refers to work on Sandman issues  
11 50 through 73. Would that be the equivalent of the  
12 standard DC Comics deal that you expected  
13 Mr. McFarlane to at least match or improve upon for  
14 purposes of as is stated in this agreement, work on  
15 Sandman issues?

16 A No. It would have been the character equity agreement  
17 which actually explains the equity that one has that  
18 formalizes the agreement with DC on the equity and  
19 royalty structure one has from the characters, that's  
20 the --

21 Q Let me stop you right there. There are not additional  
22 royalties due for work on the issues, for example, the  
23 character equity agreement does not cover, it's my  
24 understanding does not cover reprints simply of issues  
25 that you did that may not be triggered by inclusion of

1 certain characters, is that correct?

2 A No.

3 Q Let me ask you this. Let me ask you this. Under your  
4 agreement that's marked as Exhibit 57, that agreement  
5 is simply for work done on issues 50 through 73 of  
6 Sandman, correct?

7 A Uh-huh.

8 Q Nothing in that agreement specifically refers to  
9 character equity, does it?

10 A No.

11 Q But that particular agreement contains a schedule A of  
12 royalty provisions, correct?

13 A Yes.

14 Q And in return for doing the work that you do on issues  
15 50 through 73 of Sandman, you received certain  
16 royalties based on sales of those particular issues,  
17 is that correct?

18 A It is. There is an additional document from DC that  
19 we would have produced in document production, in  
20 fact, we would have produced many copies of it, which  
21 is that before they put out the trade paperback, they  
22 put a -- they send you a document to sign clarifying  
23 that you are not dealing with the reprint, either  
24 clarifying -- these days clarifying that you are not  
25 dealing with the reprint rate, in the early days

1 offering you a choice.

2 On the last page, G 19, you have a reprint rates,  
3 and which says for any pages of the work reprinted,  
4 after initial publication, which shall include  
5 additional printings, DC agrees to pay writer a sum of  
6 no less than \$20 at full script and so forth --

7 Q And I have seen some documents, and I don't have them,  
8 I'm not going to show them to you today, but I have  
9 seen documents that where that it seemed to be like a  
10 one-page agreement in which they say choose A or  
11 choose B, and you sign it and say I choose A or B, is  
12 that what you are referring to?

13 A Exactly.

14 Q Other than that, does Exhibit 57 and schedule A  
15 attached thereto provide royalty terms that cover the  
16 sales of the specific issues Sandman 50 through 73?

17 A Yes.

18 Q Exhibit 58 is a character equity agreement, correct?

19 A Yup.

20 Q And that has a date of February 1, 1993, correct?

21 A Yup.

22 Q And for purposes of today's deposition, can we treat  
23 this also as your executed version of the character  
24 agreement, the terms of which you expected  
25 Mr. McFarlane to abide by?

1 MR. ARNTSEN: Let's just, again I'm  
2 just going to object. There are very -- I suspect  
3 there are various versions of these agreements  
4 with different dates, but the lining out  
5 indicates that, just a quick review of comparing  
6 Exhibit 58 with an analogous document as part of  
7 Exhibit 47, shows some differences in them. And  
8 so, Neil, if you can answer the question, fine,  
9 but make sure you can answer the question fairly  
10 before you do so, because if I were in your shoes  
11 I couldn't.

12 Q Let's do this. And that's a fair clarification. Let  
13 me ask you some -- I will ask you some specific  
14 questions and if the provision that we are talking  
15 about is different in the two agreements, we will  
16 point that out.

17 MR. ARNTSEN: And again there may  
18 be other agreements too. We may not the have the  
19 universe of agreements in this too.

20 Q I understand that. And let me ask, maybe we can solve  
21 it this way. Mr. Gaiman, is this the only character  
22 equity agreement, whether it's the draft attached to  
23 47 -- well, strike that.

24 I think we can solve our problems this way. If  
25 you would look at the third page of Exhibit 47.

1 A Okay.

2 Q And do you see that that is a character equity  
3 agreement that the first paragraph lists a series of  
4 characters who have appeared in various Sandman  
5 issues, do you see that?

6 A Yes, I do.

7 Q Take a moment to look at the characters that are  
8 listed there. I think they are in all capital  
9 letters.

10 A Yup.

11 Q Okay. Now, if you would look at the first paragraph  
12 of Exhibit 58.

13 A Yup.

14 Q And take a look at the characters that are listed in  
15 capital letters in Exhibit 58.

16 A Yup.

17 Q Do those appear to be the same characters?

18 A Nope. I had one removed.

19 Q Which one is removed?

20 A I removed Destiny, who was a preexisting character who  
21 I didn't feel that I had changed, and they said that I  
22 had revised the preexisting character, of which I  
23 had.

24 And Destiny, and I just felt the character of  
25 Destiny, I had left him the same. I mean, I had given



1 him a house. I didn't feel that was revising a  
2 preexisting character enough to actually warrant my  
3 going in there and saying, you know, I would like a  
4 share of this character.

5 So I had them remove that. That was actually  
6 them offering something that I was perfectly happy to  
7 take away.

8 Q Other than that change taking Destiny out as one of  
9 the characters, do the other characters appear to be  
10 the same?

11 A They do.

12 Q So for the characters of Dream, also known as Sandman,  
13 and the characters of Death, Desire, Despair, Unity  
14 Kincaid, which all first appeared in Sandman number  
15 10, Delirium, which appeared first in Sandman number  
16 21, and Destruction first appearing in the Sandman  
17 special, is it fair to say that Exhibit 58 represents  
18 your executed agreement regarding character equity in  
19 those characters in Sandman?

20 MR. ARNTSEN: As of February 1,

21 1993?

22 Q As of February 1, 1993?

23 A That's my understanding, yes.

24 Q So again for purposes of the actual agreement that you  
25 signed with DC Comics regarding character equity of

1 these characters in Sandman, can we refer to the  
2 language of Exhibit 58 as being your agreement with DC  
3 Comics at least as of February 1, 1993?

4 A Yup.

5 Q Are you aware of at any time signing a character  
6 equity agreement with DC Comics other than Exhibit 58  
7 that covers these same characters?

8 A I would have to check the various character equity  
9 agreements that I have signed with them.

10 Q You in fact have signed later character equity  
11 agreements as additional characters in the Sandman  
12 series have warranted that treatment, is that correct?

13 A Exactly.

14 Q Is it also true that -- well, let me ask you. You  
15 testified earlier about characters that you may first  
16 introduce in an early issue, you gave the example of  
17 Barbie and all she did, she was scenery I think is the  
18 language you said, right, and then some 20 issues or  
19 so later she comes back and gets her own issue, is  
20 that right?

21 A Yes.

22 Q Do you know if you got a character equity agreement at  
23 some point that included the character of Barbie?

24 A I have no idea. I have no idea where -- Unity Kincaid  
25 was perfectly one of those characters. She is a woman

1 who is on stage for 15, maybe 20 panels in the whole  
2 of the second storyline.

3 Q What issue?

4 A It says here she first appears in Sandman 10. It's  
5 possible she first appears in Sandman 1. I would have  
6 to check. But she's just a little old lady who dies  
7 in a nursing home.

8 So quite why they put her in there, I think she  
9 was meant -- they sort of put her in here to stand in  
10 for all of the unnamed characters.

11 And then what happens is when they get to a point  
12 with a character where they look up and they go oh,  
13 look, we have got a comic coming out with a character  
14 or we are doing a toy with this character that Neil  
15 created or somebody is spinning it off, at that point  
16 they send me a character equity agreement.

17 An example which would be exactly analogous to  
18 the Medieval Spawn is again recently I was sent -- I  
19 created a character at DC, did an old-fashioned  
20 version of an existing DC character --

21 Q Who was that?

22 A Character called John Constantine.

23 Q Where did John Constantine first appear in DC Comics?

24 A Swamp Thing something or other.

25 Q Did he have his own title?

1 A Yes, he does.

2 Q Did he when he first appeared in DC Comics?

3 A No, he was a character in a crowd.

4 Q And what did you do with him?

5 A I created a seventeenth century, eighteenth century  
6 version of him.

7 Q What did you do with the eighteenth century version of  
8 him?

9 A She came on for one scene in Sandman number 14 and  
10 tried to capture my hero and failed.

11 Q Is that the only time that John Constantine appeared?

12 A No. That was Lady Joanna, his ancestress. And then I  
13 had her turn up again a couple of years later on an  
14 adventure in the French Revolution.

15 Q Do you have a character equity agreement covering Lady  
16 Joanna?

17 A One is apparently on its way because I just heard they  
18 are doing a miniseries starring her.

19 Q So that's a miniseries starring Lady Joanna?

20 A Right.

21 Q The original character was not Lady Joanna, right?

22 A Right.

23 Q The original character was John Constantine?

24 A Correct.

25 Q And Lady Joanna was John Constantine's ancestor?

1 A Probably.

2 Q I'm not sure how that's analogous to Medieval Spawn.

3 A Derivative character. I did a version of the  
4 character, changed her sex this time.

5 Q Now, the original character John Constantine was not  
6 the title character of any DC Comics product, was it?

7 A Yes, he was the comic, it's either called Hell Blazer  
8 or John Constantine Hell Blazer.

9 Q And that's what originally appeared in DC Comics, is  
10 that correct?

11 A No. The comic that originally appeared, the character  
12 originally appeared in was Swamp Thing where he was a  
13 minor character who grew into a major character and  
14 then he spun off, not created by me.

15 Q So you just, in creating the character, the Lady  
16 Joanna character who you are now getting a character  
17 equity agreement with, that was a derivative character  
18 of an existing DC Comics character John Constantine,  
19 correct?

20 A Yup.

21 Q And you say you have -- a character equity agreement  
22 for her is on the way?

23 A Uh-huh.

24 Q As far as you know, will it have the same terms that,  
25 as far as what royalty percentages, et cetera, are in

1 Exhibit 58?

2 A I cannot say.

3 Q Have you negotiated for any additional or different  
4 terms?

5 A There is a prorated -- anyway, in answer to your  
6 specific question, I haven't negotiated. I'm waiting  
7 for the thing to arrive and I assume that DC will  
8 treat me fairly because they always have. There is  
9 certainly -- you should have -- can I mention  
10 something?

11 MR. ARNTSEN: No, let's just --

12 THE WITNESS: Okay.

13 Q If you think there is a document I should have and you  
14 want to ask your attorney, if we can speed things  
15 along, please feel free to do so.

16 (Discussion off the record)

17 MR. SALSICH: Nothing?

18 MR. ARNTSEN: He says there is, and  
19 I don't know if you can find it, a character  
20 equity agreement involving Matthew, the Raven,  
21 which he thought may be analogous, but --

22 A Which should be in those piles of stuff that I  
23 provided you guys with.

24 MR. SALSICH: Let's go off the  
25 record for a second.

1 (Discussion off the record)

2 Q As far as you know, Mr. Gaiman, does Exhibit 58  
3 represent the agreement that you signed with DC Comics  
4 in and around the early 1993, February through April  
5 of 1993 regarding character equity in the characters  
6 listed in the first paragraph of that document?

7 A Yes.

8 Q And is it true that you are not presently aware of any  
9 other character equity agreements between yourself and  
10 DC Comics related to these specific characters? I'm  
11 not asking you to say if you know or if you are  
12 certain that none exist. I'm asking if you are aware  
13 of any others besides this exhibit?

14 A No.

15 Q And when you -- let me ask you. I don't know if you  
16 have a copy of your amended complaint. I brought  
17 copies if you need them.

18 Let me just hand you one. I don't know that we  
19 need to mark it as an exhibit.

20 MR. SALSICH: This is the amended  
21 complaint. Do you want to look at that, Allen,  
22 make sure I have got the right one?

23 MR. ARNTSEN: As far as I know  
24 there is only one amended complaint.

25 MR. SALSICH: Well, I got all the

1 pages copied. It's the one signed at the back.

2 Q Would you take a look at page 11 of your amended  
3 complaint, Mr. Gaiman.

4 A Yup.

5 Q Do you see paragraph 48?

6 A Yup.

7 Q And right above that there is a subheading with a  
8 letter C, and it says the 1997 agreement. Do you see  
9 that?

10 A Yup.

11 Q I want to ask you some questions about what's been  
12 characterized in your complaint as, your amended  
13 complaint as the 1997 agreement. And the easiest way  
14 to do this may simply be to walk through these  
15 paragraphs and ask you some questions and we will  
16 probably refer to some of these documents. Okay?

17 A Okay.

18 Q In paragraph 48 you allege that you received a memo  
19 from Larry Marder of Image Comics setting forth terms  
20 regarding royalties for Angela, Medieval Spawn and  
21 Cogliostro, and that was around February 18th, 1997.  
22 Do you see that?

23 A Yup.

24 Q Earlier we were talking about an offer you received  
25 from Larry Marder which you said was significantly



1 less than what it should have been pursuant to the DC  
2 Comics agreements, correct?

3 A Yes.

4 Q And that that in fact is the offer that is referred to  
5 by Melanie Cook in the letter she sends to Larry  
6 Marder attaching the contracts and that letter was  
7 marked as Exhibit 47, I believe?

8 A Yes.

9 Q Okay. Second sentence in paragraph 48 of the amended  
10 complaint states that "The written offer was  
11 substantially worse than the terms of Gaiman's Sandman  
12 contract with DC Comics, contrary to the agreed upon  
13 standard for the treatment of Gaiman under the 1992  
14 agreement." Do you see that sentence?

15 A Yup.

16 Q And I want to make sure that the terms of Gaiman's  
17 Sandman contract with DC Comics, are you referring to  
18 the Sandman agreement with DC contracts that we have  
19 marked as Exhibit 58, which is the executed version of  
20 your character equity agreement?

21 A Not necessarily. That wouldn't have existed  
22 necessarily at the end of '92 when those checks came  
23 in.

24 Q When is the first time you ever got a character equity  
25 agreement from DC Comics?

1 A I think this may be the first of the character equity  
2 agreements, but it formalized --

3 Q I'm sorry, I didn't mean to interrupt.

4 A But it took the April 20th, 1988 contract, amended  
5 January 2nd, 1990 and May 20, 1991, and worked out,  
6 worked out a formula and put it all down on paper. So  
7 as I understand it, that stuff was implicit in the  
8 earlier contracts.

9 Q But not explicit, correct?

10 A But not explicit. This is the first time it was made  
11 explicit.

12 Q Is it your testimony that the terms contained in  
13 Exhibit 58, which was executed after your 1992  
14 agreement with Todd McFarlane, nevertheless accurately  
15 reflect the arrangement you had with DC Comics at the  
16 time of your 1992 agreement with Todd McFarlane?

17 A As I understand it, yes. I mean, there may have been  
18 -- I mean, my agent had been negotiating this contract  
19 all through 1992. So this was long before Todd ever  
20 got hold of me.

21 Merrilee had been going backwards and forwards  
22 with them, with DC, and figuring out the exact way and  
23 shape of the contract, but up until that point it had  
24 not become -- when I began doing comics for DC, this  
25 was the standard of the comic. This was the kind of

1 contract that one was signing.

2 MR. ARNTSEN: Referring to Exhibit  
3 57?

4 A Referring to Exhibit 57, which is the agreement is I'm  
5 writing a comic for you.

6 Q And the standard agreement which you said was embodied  
7 in Exhibit 57 which in fact covered your work on  
8 Sandman issues 50 through 73, correct?

9 A Uh-huh.

10 Q And which also amends and updates the agreement  
11 originally dated April 20th, 1988, does it not?

12 A It does.

13 Q That's the agreement that is the standard DC Comics  
14 agreement, in your experience, when one simply writes  
15 a comic book issue, is that correct?

16 A It is.

17 Q And that --

18 A By this point, we could see that the characters were  
19 able to start spinning off, that merchandising, and so  
20 on and so forth, was beginning to occur, which was not  
21 happening in 1988 when I signed the original  
22 agreement. So that we were putting into, down on  
23 paper how things actually worked so that I didn't wind  
24 up phoning them all the time and saying hey, you just  
25 sold the movie rights, what do I get, hey, you are

1 doing a toy, what do I get, which is what happened.

2 Q So that Exhibit 58 represents the culmination of  
3 negotiations between you or your agent and DC Comics  
4 as to how you are going to share in the equity of the  
5 characters that you have created up through issue 50  
6 of Sandman, is that correct?

7 A Yes.

8 Q And that your negotiations with DC Comics that  
9 culminated in Exhibit 58 were taking place, sounds  
10 like, before, during and after the time that you  
11 entered into the 1992 agreement with Todd McFarlane  
12 regarding issue 9, is that correct?

13 A It is.

14 Q So is it fair to say, when referring to paragraph 48  
15 of your complaint, that when you say that the agreed  
16 upon standard for treatment of Gaiman under the 1992  
17 agreement is embodied in the terms of Gaiman Sandman  
18 contract with DC Comics, are you referring to Exhibit  
19 57 or are you referring to Exhibit 58?

20 A I would be referring to the entire run of Sandman  
21 contracts, and going back to the 1988 one, which only  
22 gives me character equity in ownership if I complete  
23 the first 12 issues, for example. There is a clause  
24 in there that I get a share of that, of the characters  
25 in that issue.

1 Q Is it fair to say that in fact there really isn't a  
2 standard DC contract, DC Comics contract right at the  
3 end of 1992 that governs -- that has always governed  
4 your relationship with DC Comics -- in fact, isn't it  
5 fair to say that based on at least three amendments of  
6 an agreement you signed in 1988 with DC Comics and  
7 another agreement which you negotiated throughout 1992  
8 that ended up in the character equity agreement in  
9 Exhibit 58, that your participation in royalties, et  
10 cetera, with DC Comics changed over time, isn't that  
11 true?

12 A Absolutely.

13 Q Do you see my problem here though is you have got an  
14 allegation against my client that he agreed to treat  
15 you a certain way and the only -- in 1992, and you  
16 have already testified that in 1992 that's all that  
17 was said, there was no discussion of what percentage  
18 of royalty was gained, what was done with this  
19 character or that character, what was going to happen  
20 with the toy, so that in 1997 you are sending  
21 documents to Mr. McFarlane to explain what was meant  
22 by your DC Comics contract back in 1992?

23 A Certainly. They were the grounds from which we were  
24 negotiating our deal.

25 Q I understand, but let me ask you this. Is it true

1 that you never told Mr. McFarlane in 1992 what  
2 percentage of royalty you got based on licensed  
3 products?

4 A Yes.

5 Q Is it true that you never told Mr. McFarlane in 1992  
6 what percentage royalty you would get from DC Comics  
7 based on reprints?

8 A Yes.

9 Q Is it true that you never told Mr. McFarlane in 1992  
10 what percentage of DC Comics would pay you as a  
11 royalty for trade paperbacks?

12 A I have already testified that Mr. McFarlane and myself  
13 didn't talk percentages back then.

14 Q But in 1997 now you are telling Mr. McFarlane that he  
15 agreed to match a DC Comics contract, is that right?

16 A No, I'm not saying to him he agreed to match a  
17 contract. I'm saying to him he agreed to treat me as  
18 well or better than DC and this is how DC does it,  
19 let's talk, let us negotiate.

20 Q All right. Well, then maybe I'm misunderstanding  
21 you. Are you in 1997 negotiating for the first time  
22 what the royalty rates should be for the use of Angela  
23 and Cogliostro and Medieval Spawn?

24 A In 1996, as far as I'm concerned, we are memorializing  
25 and getting exactly into putting on paper for the

1 future a deal that we have, which is that  
2 Mr. McFarlane will treat me better, as well or better  
3 than DC would have done.

4 Q I understand that and I know it sounds --

5 A And so we are trying -- we are obviously -- this is an  
6 abstract concept. We are attempting to attain an  
7 abstract contract.

8 I'm not trying to put one over on Mr. McFarlane.  
9 I'm trying to say okay, I have grabbed a contract,  
10 these are the figures.

11 Q Let me stop you right there. And I think it's  
12 important for us to try to do the best we can right  
13 now in letting each other finish our questions and  
14 answers.

15 A Sorry.

16 Q That's all right. I'm doing it too. I just want to  
17 make sure I have got this clear.

18 You said that in 1996 you are memorializing what  
19 you both meant back in 1992 when you said treat me  
20 better than I get treated at DC Comics, is that right?

21 A Uh-huh.

22 Q And that back in 1992 the only specific statement you  
23 testified that Mr. McFarlane made regarding being  
24 treated better than at DC Comics was that he wasn't  
25 going to ask you to sign your rights away, is that

1 correct?

2 A I think there were a lot more. I mean, if you are  
3 going to say specific statement, Mr. McFarlane said a  
4 lot more than that.

5 Q I'm talking about what he said about all the good  
6 reasons you should do it. I realize that, but I'm  
7 talking about specific terms that you agreed on.

8 As I understood your testimony earlier today, and  
9 you have just repeated it here, you did not talk about  
10 a seven and a half percent royalty, or a 15 percent  
11 royalty or any other royalty figure for any use of any  
12 characters or any reprints of any issues, is that  
13 correct?

14 A Yes.

15 Q In 1992?

16 A It is.

17 Q But in 1996 you are attempting to memorialize in  
18 writing what you meant by that back in 1992, is that  
19 correct?

20 A In 1996 I'm just trying to get something down on paper  
21 that I feel is analogous to a DC deal, the kind of  
22 figures that I would have been getting from DC Comics.

23 Q And my point is -- well, let me ask you this. In your  
24 complaint on page 20 you have got a claim in the  
25 middle of the page, it says count four, breach of



1 contract, do you see that?

2 A Uh-huh.

3 Q And in paragraph 76 you state, and I will quote,  
4 "McFarlane and the McFarlane corporate defendants  
5 breached the 1992 and 1997 agreements by, inter alia,  
6 failing to pay Gaiman the agreed upon royalties for  
7 exploitation of the Angela intellectual property and  
8 other intellectual property held by Gaiman." Do you  
9 see that?

10 A Yup.

11 Q And then in paragraph 77 you state "McFarlane and the  
12 McFarlane corporate defendants breached the 1992 and  
13 1997 agreements by, inter alia, interfering with  
14 Gaiman's right to do and commercially benefit from  
15 publishing 'one-offs' and by interfering with Gaiman's  
16 right to do and commercially benefit from a Randy  
17 Bowen Design Angela statue." Do you see that?

18 A I do.

19 Q And you state in both paragraph 76 and paragraph 77  
20 you allege breaches of the 1992 agreement, okay. Do  
21 you see that?

22 A Uh-huh.

23 Q All right. And I'm really trying to find out what  
24 part of the 1992 agreement has Mr. McFarlane or the  
25 McFarlane corporate defendants breached?

1 A Are you asking me a question?

2 Q I am asking you a question.

3 A Okay.

4 Q Explain what you mean by paragraph 76 leaving out  
5 reference to a 1997 agreement. I want to know how the  
6 1992 agreement was breached.

7 A Mr. McFarlane did Angela toys. These were brought  
8 out, I believe, in the Spring of 1994 and were very,  
9 very popular.

10 He did various models of them, including a  
11 12-inch high Angela toy and a red Angela toy, a cosmic  
12 Angela. No payments of any kind were made on these  
13 until we finally got to the 1997, that final, the  
14 payment that signified that the 1997 agreement had  
15 started, nor was there any attempt --

16 Q Let me stop you right there. How much was  
17 Mr. McFarlane supposed to pay you under the 1992  
18 agreement, what percentage royalty was Mr. McFarlane  
19 supposed to pay you pursuant to the 1992 agreement as  
20 royalties from the Angela toys?

21 MR. ARNTSEN: If you know.

22 Q Well, take all, look at all the documents. I mean,  
23 you have said the DC Comics deal, you have got all  
24 these character equity agreements. I'm just trying to  
25 find in here where we can do it.

1 I don't want to get short with you, I really  
2 don't, but we have got a certain amount of time left  
3 and we really need to kind of pin this down. So if  
4 you can point to me what document I should be looking  
5 at, what document Mr. McFarlane should be looking at  
6 to say oh, I should have paid him 15 percent of net.

7 A Mr. McFarlane managed to make it work for the Medieval  
8 Spawn toy.

9 Q That's not my question.

10 A I know, but I'm saying I got a check.

11 Q That's not my question. Tell me how much, what  
12 percentage royalty Mr. McFarlane is supposed to be  
13 paying you for the Angela toys under the 1992  
14 agreement?

15 A Under the 1992 agreement, a payment.

16 Q Doesn't matter how much?

17 A Well, as long as it in some way reflected a fair-ish  
18 share of what I would have -- of something that Todd  
19 felt fair, I would have been fine on it. Nothing came  
20 in. And it became more and more obvious nothing was  
21 going to come in.

22 Q And why would you have been satisfied with just  
23 something fair, is it because you had never agreed on  
24 a royalty rate?

25 A I trusted Todd.

1 Q That's not my question. Did you ever agree on a  
2 royalty rate in 1992?

3 A No.

4 MR. ARNTSEN: Object as he's  
5 answered that already.

6 Q What was the Randy Bowen design Angela statue?

7 A Randy Bowen is the top guy in comics when it comes to  
8 doing statuettes, high end things you can put on, you  
9 know, the corners of tables and so forth, not toys,  
10 \$150 porcelain kind of things. And he approached me  
11 at some point in the nineties and said he would  
12 really, really like to do an Angela toy, an Angela  
13 statue and, you know, he thought it will be cool and  
14 that obviously I would make some money out of it.

15 And I said that was a lovely idea and to contact  
16 Todd. And as far as I know he never heard back from  
17 Todd.

18 Q So how did that prevent you from -- how did Todd  
19 prevent you from benefiting from a Randy Bowen design  
20 Angela statue?

21 A If Todd had given his approval on it, he would have  
22 gone into, you know, Randy would have made it without  
23 Todd's approval without any communication from Todd.

24 Q Did Randy need Todd's approval in your opinion to make  
25 this statue?

1 MR. ARNTSEN: Object to the extent  
2 it calls for a legal conclusion.

3 Q As far as you understood, you told Randy Bowen to go  
4 talk to Todd. Why did you do that?

5 A It seemed polite.

6 Q Do you believe Todd had some obligation under the 1992  
7 agreement -- well, let me step back. What time was  
8 this, what time period did this happen?

9 A I don't know.

10 Q You said some time during the nineties, you can't  
11 remember?

12 A Some time during the nineties. I can't remember.

13 Q That's a long decade. Let's try to pin it down. Was  
14 it before you went to Phoenix or not?

15 A I think so.

16 Q By the time you leave Phoenix, things are not -- you  
17 are not in a great relationship with Todd, is that  
18 correct?

19 A No. By the time I leave Phoenix I figure everything  
20 is sorted out again.

21 Q Then six months you get the offer and you realize  
22 things are not sorted out, is that correct?

23 A Yes.

24 Q You learn from Larry Marder that Todd's asked Larry to  
25 talk to you about it. And my question is when Randy

1 Bowen comes to you, is this before you have gone to  
2 Todd and say hey, I'm not getting any royalty from  
3 this stuff, what's going on?

4 A Yes.

5 Q So it's well before any 1997 agreement, is that  
6 correct?

7 A Yes.

8 Q Did you understand that Todd at any time in the 1992  
9 agreement made a promise to you that he would make  
10 certain statues of these characters?

11 A Absolutely not.

12 Q So even if Todd had been paying you royalties all  
13 along, you wouldn't say that there is anything in the  
14 contract that said Todd should have made this statue  
15 with Randy Bowen, is that correct?

16 A Yes.

17 Q What are publication one-offs?

18 A They are comic books or possibly trade paperback  
19 originals, not to be confused with one shots.

20 Q You have to help me more than that.

21 A I'm sorry. I'm just pulling my thoughts together. A  
22 one-off is a -- could be anything from a trade  
23 paperback original or a hardback original to a  
24 series.

25 Angela was a one-off. It was -- it's not an

1 ongoing series. It's something that happens probably  
2 six, maybe eight, 12 issues is probably as far as you  
3 could go and say something was a one-off --

4 Q Before it becomes its own series?

5 A After that it becomes its own series.

6 Q In paragraph 77 you state that "McFarlane and the  
7 McFarlane corporate defendants breached the 1992 and  
8 1997 agreements by, inter alia, interfering with  
9 Gaiman's right to commercially benefit from  
10 publication one-offs." What do you mean by that?

11 A What I mean specifically is part of the 1997 agreement  
12 was what we tied everything down is one of the things  
13 that Todd gave me to make up for -- do you remember I  
14 mentioned earlier the Angela, Glory and the Medieval  
15 Spawn, Witchblade comics that other Image houses did.

16 So Todd said "Look, I can't pay you anything for  
17 those, but what I will give you is the right to go and  
18 do a one-off, a one-shot payment with other comic  
19 companies using Angela or Medieval Spawn." So if I  
20 want to do Medieval Spawn Batman, I could, and I could  
21 have done Medieval Spawn Batman as a 120-page graphic  
22 novel or I could have done it as a series of four  
23 comics, or whatever, and the same with Angela, where  
24 if I had wanted to do Angela meets the X-Men, I could  
25 have done four issues of Angela meets the X-Men,

1       whatever, or if the other idea was if I wanted to just  
2       do an Angela series or a Medieval Spawn series, I had  
3       to do it with another image -- I had to do it at  
4       Image. If it was a team-up, I could take it to  
5       another company. And that was Todd's agreement in  
6       '97.

7       Q Is that the same as a crossover?

8       A Not quite, because what you are talking about, a  
9       crossover could occur in a regular comic. A crossover  
10      basically is what happens when two characters cross  
11      over, you know, they intertwine. You get a Sandman,  
12      turns up in Spawn that will be the famous Sandman,  
13      Spawn crossover or whatever.

14      Q How is that different from Medieval Spawn Batman  
15      one-off, is that because of where it appears?

16      A It's the way it gets published. It could be -- it  
17      could conceivably be a crossover, but a crossover  
18      tends to -- we are really into comics trivia, but it  
19      tends to imply that you have done, you know, you had a  
20      story over here and you have a story over here and now  
21      they cross over.

22               The Angela series, the three-issue Angela series  
23      I did could have also been considered a Spawn  
24      crossover because Spawn is in it, but it wasn't  
25      actually Spawn. It was Angela and Spawn was a



1 character in it.

2 Q Now, if you look at Exhibit 58 --

3 A You asked me the question, I don't think I actually  
4 answered, you asked how they had breached it.

5 Q Yes.

6 A Okay. I had --

7 Q Well, let me stop you. I think you did say, and let  
8 me just make sure, you stated that in the 1997  
9 agreement, because Todd had said there were no  
10 royalties to give you based on the sharing of the  
11 characters with Image Comics, that he would make that  
12 up to you by allowing you to do a one-off with Angela  
13 and a one-off with Medieval Spawn, is that correct?

14 A Yes.

15 Q And that in fact, in breach of that 1997 agreement,  
16 according to your allegations here, he did not let you  
17 do that, is that right?

18 A What happened was I spoke to people at Marvel Comics  
19 and at DC Comics about doing these comics. They were  
20 very enthusiastic at the time. And when they phoned  
21 Todd, nobody would put them through to him and he  
22 didn't return calls.

23 Q Did you hear from anyone at DC Comics or Marvel that  
24 Todd specifically said that you could not do a one-off  
25 with DC or Marvel?

1 A What I heard was that Todd would not return calls.

2 Q And is it your understanding that DC Comics or Marvel  
3 needed to get permission from Todd before they would  
4 agree to do a one-off with you containing the Medieval  
5 Spawn or the Angela character?

6 A Both of them would want, yes.

7 Q Why is that?

8 A Otherwise they only have my representation that this  
9 is an agreement with Todd and they are going to want  
10 to hear it from Todd, yes, it's okay. They are not  
11 going to go ahead and publish Medieval Spawn Batman  
12 without knowing that it's going to be Todd, otherwise  
13 they would run into trouble further down the road.

14 Q Why would they run into troubles, because they  
15 realized Medieval Spawn was a character owned by Todd  
16 McFarlane?

17 MR. ARNTSEN: Object, calls for a  
18 legal conclusion or lack of foundation.

19 Q You can answer.

20 A I don't actually understand the question.

21 Q Well, you just said that DC and Marvel would not do  
22 the one-off with you without knowing that Todd had  
23 given you permission to do so, is that correct?

24 A Uh-huh.

25 Q And I'm asking if you know, based on your 15 plus

1 years in the comic book industry, why DC Comics would  
2 believe or Marvel Comics would believe that it needed  
3 to get Todd's permission rather than just yours to do  
4 a one-off with Angela or Medieval Spawn?

5 A On the case of Medieval Spawn, Todd is the holder of  
6 the trademark, I imagine holder of all Spawn  
7 copyrights, and they are going to want to know that  
8 it's completely okay. They don't want to run into  
9 problems somewhere down the line.

10 Q Would the same be true of Angela?

11 A I don't believe that Todd owns all copyrights on  
12 Angela, but again you don't want -- Todd is obviously  
13 the co-creator of Angela, Todd has previously been the  
14 publisher of Angela.

15 You don't want to, you know -- the last thing  
16 you want is the polite little letter from the lawyer  
17 letting you know that you cannot send a comic that you  
18 have already prepared to press.

19 Q And I just want to get from you the specific actions  
20 that McFarlane took and you have got this allegation  
21 against the other McFarlane corporate defendants. I  
22 want to be clear.

23 You have this allegation both in paragraph 76 and  
24 77 that both McFarlane, meaning Todd the individual  
25 and the McFarlane corporate defendants, breached these

1 agreements. Do you see that in your complaint?

2 A Uh-huh.

3 Q How did TMP International breach your 1992 agreement?

4 You didn't have a 1992 agreement with TMP  
5 International, did you?

6 A As far as I know I didn't.

7 Q You didn't have a 1997 agreement with TMP  
8 International, did you?

9 A I don't know. I would have to go back and look at the  
10 stuff that was signed. I don't know whether that was  
11 as all defendants.

12 Q We will do that in a second.

13 A Okay. Having dealt with Todd McFarlane, watched  
14 Todd's deposition and watch Todd now speak, I'm  
15 speaking as he said, always assume I'm speaking as  
16 TMP.

17 Q Did you make these allegations in your complaint  
18 before Todd's deposition?

19 A Yes.

20 MR. ARNTSEN: Object,  
21 argumentative. The lawyers drafted the  
22 complaint. Let's take a break.

23 (A short recess is taken)

24 Q You have alleged that Mr. McFarlane and the other  
25 McFarlane defendants breached the 1997 agreement, is

1           that correct?

2           A   Yes.

3           Q   I would like to talk about that 1997 agreement, if  
4           that's all right.

5           A   Okay.

6           Q   If you would turn to page 14 of your amended  
7           complaint. Do you see paragraph 54 at the bottom?

8           A   Uh-huh.

9           Q   It states "Gaiman's May 5 letter, Gaiman's first July  
10          15th letter, McFarlane's July 15th letter and Gaiman's  
11          confirming July 15th letter, former written  
12          agreement," and that's the 1997 agreement?

13          A   Uh-huh. I'm sorry. Yes.

14          Q   My question to you is as far as you are concerned, are  
15          there any other documents or communications that  
16          supplement those four letters?

17          A   I would have to see what those letters are. Do we  
18          have them?

19          Q   Yes. I will hand them to you. They have all been  
20          marked as exhibits previously and we ought to look at  
21          them altogether probably. It will be easiest because  
22          you may be able to refer back and forth and help  
23          explain it to me.

24                    They are Exhibits No. 2, No. 19, No. 20 and No.  
25          33.

1 A There is one more.

2 Q What is that?

3 A My letter of around the 1st of August to Todd.

4 Q That would be Exhibit 50.

5 A Yup.

6 Q If you look at paragraph 55 of your amended complaint  
7 on page 15, you state that on August 1, 1997, having  
8 not received the Miracleman materials, et cetera, et  
9 cetera, Gaiman faxed McFarlane an inquiry letter. Is  
10 that what you are referring to?

11 A Yup.

12 Q Does Exhibit 50 form part of the 1997 contract or  
13 not?

14 MR. ARNTSEN: Object, calls for a  
15 legal conclusion.

16 Q As far as you know, Mr. Gaiman?

17 A I'm not a lawyer. I couldn't say.

18 Q In your opinion, I'm asking for what you understand  
19 the terms, you were the person that entered into the  
20 agreement with Mr. McFarlane, is that correct?

21 A Yes.

22 Q 1997, the 1997 agreement?

23 A Yes.

24 Q Did you have a lawyer help you with drafting any of  
25 the terms of that agreement?

1 A No. Mr. McFarlane stated categorically that he would  
2 only talk to me after getting the letter from Melanie  
3 Cook, that he would only talk and negotiate and  
4 organize something if no lawyers were involved. It  
5 was just me and him mono-a-mono, two guys together.

6 I very much wanted lawyers to sort it out because  
7 I figured we wouldn't be in the mess we are now in.

8 Q So your answer is no, you didn't have a lawyer?

9 A No, didn't have a lawyer.

10 Q So is it fair to say that you drafted these letters  
11 back and forth, including your May 5th letter and your  
12 two July 15th letters --

13 A I drafted the May 5th letter. I then had a long phone  
14 call with Todd on the 15th of July, 1997 where he  
15 phoned me up, agreed to everything, said yes, we had a  
16 deal and went over the points of the deal with me and  
17 said we had a deal.

18 What I did in my letter of July the 15th was  
19 then, from the list that I made, I sat and I typed  
20 everything up, and sent it off to him. I was  
21 incredibly relieved that finally this was all going to  
22 be done.

23 Mr. McFarlane on July 15th faxed me straight back  
24 to say beauty --

25 Q I'm familiar with what the letters say. Let's try to

1 do this as a little bit more question and answer, if  
2 we could.

3 A Absolutely.

4 Q My question to you is did you believe that you had a  
5 contract with Mr. McFarlane after you sent back your  
6 confirming letter on July 15th, 1997 which has been  
7 marked as Exhibit 33?

8 A Yes.

9 Q So is it fair to say that the letter you sent on  
10 August 1st, 1997, which has been marked as Exhibit 50,  
11 was not part of the agreement itself but simply a  
12 follow-up letter wondering what's going on?

13 A Well, and it said at the end if it isn't going to  
14 happen, let me know and we can renegotiate.

15 Q What did you mean by that?

16 A I meant if Todd had changed his mind, he had somehow  
17 reneged or gone back on the deal, I was perfectly  
18 happy to roll up my sleeves and say okay, well, what  
19 do you want, let's keep going on this until we have  
20 something that's a deal, but obviously we had.

21 Q But your understanding was that you did have a deal on  
22 July 15th?

23 A Yes, entirely.

24 Q Let's talk about that deal. In your first July 15th  
25 letter, which has been marked previously as Exhibit



1 19, your third paragraph down, you state "My rights in  
2 Cogliostro and Medieval Spawn as above will be  
3 exchanged for your share of Miracleman," correct?

4 A Uh-huh.

5 Q I would like to ask you about that. What did you mean  
6 by your rights in Cogliostro and Medieval Spawn?

7 A I was the creator of Cogliostro and the creator of the  
8 derivative character Medieval Spawn. I had --

9 Q So what rights did you have by virtue of being a  
10 creator of those characters?

11 MR. ARNTSEN: Object to the extent  
12 it calls for a legal conclusion. Testify as to  
13 what your understanding is of those rights.

14 Q Let me clarify here. I'm asking you -- I have already  
15 asked you if you had a lawyer help you choose these  
16 words, correct?

17 A Yes.

18 Q And you testified that you did not?

19 A Yes.

20 Q These are your words?

21 A Absolutely.

22 Q So I'm asking only as to your understanding as to the  
23 words you chose to use in the documents which you  
24 claim form a contract with my client. Okay.

25 So I'm asking you what did you mean when you said

1 "My rights in Cogliostro and Medieval Spawn," and your  
2 answer was I created those characters. My question to  
3 you is what rights did you get by virtue of being the  
4 creator as you understood it?

5 A As I understood it, I had an intellectual property, a  
6 share in the intellectual property of these  
7 characters.

8 Q And what do you mean by intellectual property of these  
9 characters?

10 A I mean some share financially and beyond that in who  
11 these characters were, what they were as the creator.  
12 I had the -- I had written their first appearance, I  
13 had made them up. I created the name of Cogliostro,  
14 the character of Medieval Spawn and was willing to  
15 hand everything, as far as I understood, had now  
16 handed everything, whatever rights I had in those  
17 characters, whatever share of the characters as the  
18 creator I had, I was giving to Mr. McFarlane.

19 Q And that's my question. I understand that. That  
20 hasn't told me what your share is.

21 Did you understand, when you wrote this letter on  
22 July 15th of 1997, that you had acquired rights in  
23 Cogliostro and Medieval Spawn by virtue of an  
24 agreement in 1992 or by virtue of your creation of the  
25 characters?

1 A By virtue of my creation of them and never having  
2 signed anything away on them.

3 Q So you did not have any contract in 1992 or any other  
4 time that specifically granted you any rights in  
5 Cogliostro and Medieval Spawn, is that correct?

6 A No, I hadn't granted Mr. McFarlane any rights  
7 specifically.

8 Q That's not my question. I'm asking if you ever got  
9 any rights to Cogliostro and Medieval Spawn by virtue  
10 of any contract?

11 A Can I ask my lawyer something, please?

12 Q Let me ask the questions. If your lawyer needs to  
13 object, that's fine, you can talk with him.

14 MR. ARNTSEN: I guess I will  
15 object. The question may be vague as to whether  
16 you are just referring to written contracts or you  
17 are encompassing both oral and written contracts  
18 and I think the witness wasn't clear because of  
19 that. That was what I was --

20 Q Your testimony a few minutes ago, and I don't want to  
21 mischaracterize it, but I believe this is accurate,  
22 was that you obtained rights in Cogliostro and  
23 Medieval Spawn, those characters, by virtue of your  
24 creating those characters in issue 9?

25 A Uh-huh.

1 Q Coupled with the fact that you were not asked to or  
2 obligated to sign any rights away under those  
3 characters, is that correct?

4 A Uh-huh.

5 Q And is that based on your understanding and based on  
6 your experience with DC Comics that you typically,  
7 when you do a contract with DC Comics even for  
8 characters that you have created, you do sign away the  
9 copyrights to those characters, is that correct?

10 A Not necessarily. If it is work for hire and has been  
11 previously agreed, you did.

12 Q I understand that. Let me ask you a question.

13 MR. ARNTSEN: Let him finish his  
14 answer to a question before you interrupt him.

15 Q Have you ever signed a character equity agreement with  
16 DC Comics regarding any character in the Sandman  
17 series that was not a work for hire?

18 A The whole of Sandman was work for hire.

19 Q Okay. So it's the work for hire provision in those  
20 contracts in which you give up your copyright  
21 interest, is it not?

22 MR. ARNTSEN: Object, calls for a  
23 legal conclusion.

24 Q Take a look at Exhibit 58, please, Mr. Gaiman, excuse  
25 me, Exhibit 57. Do you have that?

1 A Yup.

2 Q You see paragraph 6?

3 A Yup.

4 Q And that states that the work created hereunder is a  
5 contribution to a collective work and constitutes a  
6 work made for hire, is that correct?

7 A Yes.

8 Q Down in the middle of that paragraph, it says "In the  
9 event that the work is not deemed to be a work made  
10 for hire, then the writer hereby assigns all rights in  
11 the work, including the copyright and trademark  
12 rights." Do you see that?

13 A Yes.

14 Q And this agreement governs Sandman issues 50 through  
15 73, is that correct?

16 A Yup.

17 Q And you said Sandman ended on issue 75?

18 A Yup.

19 Q Is this the type of provision that you would typically  
20 see in your experience in contracts with DC Comics  
21 through which you would give up whatever rights you  
22 had, your copyright, your intellectual property rights  
23 that you referred to?

24 A I don't understand the question.

25 Q You testified that you believed, by the fact that you

1 did not sign any rights away with Mr. McFarlane in  
2 1992, you retained some share in the intellectual  
3 property rights of those characters or those  
4 creations, is that correct?

5 A Yes.

6 Q You testified that that meant you would get to share  
7 financially and in other ways, is that correct?

8 A Yes.

9 Q I want to clarify what you mean by that. Do you mean  
10 -- do you have any understanding of what a copyright  
11 is?

12 A I thought I did when this thing began. I have now  
13 realized it's an incredibly legal thing and would love  
14 to have five years to learn.

15 Q But you have had -- you have been publishing works,  
16 copyrighted works for 15 plus years, is that correct?

17 A Absolutely.

18 Q And when you authored American Gods, for example, your  
19 novel, that's copyrighted Neil Gaiman, isn't it?

20 A Yes.

21 Q Yet when you do work for DC Comics, the work for hire,  
22 and the work ends up being published copyright DC  
23 Comics, correct?

24 A Yes.

25 Q The fact that something gets copyrighted, that the

1 copyright ownership belongs to DC Comics, does not  
2 affect your ability to share in the royalties based on  
3 those characters, is that correct?

4 MR. ARNTSEN: Object, calls for a  
5 legal conclusion.

6 A I do benefit from the royalties.

7 Q All of the work that you did for DC Comics on the  
8 Sandman series was copyright DC Comics, correct?

9 A Yes.

10 Q And you have received royalties, character equity, for  
11 much of that work as well, correct?

12 A Yes.

13 Q So the fact that you did work for hire for DC Comics  
14 and DC Comics retained the copyright to that work did  
15 not prevent you from receiving royalties based on that  
16 work, is that correct?

17 A Yes.

18 Q So you understand there is a difference between  
19 royalty rights and intellectual rights in the work  
20 that you do in the comic book industry, right?

21 A Absolutely.

22 Q Back to Exhibit 19. When you refer to "My rights in  
23 Cogliostro and Medieval Spawn," now I want to clarify,  
24 are you referring to contractual royalty rights or are  
25 you referring to intellectual property rights or both?

1 A I'm referring to all possible rights, as in the line  
2 that you just had me read in this where DC has me  
3 assign all rights in the work including copyright and  
4 trademark right and all other rights to exploit the  
5 work. I think that's the same kind of territory that  
6 we are talking about here.

7 Q But in that DC Comics contract you don't assume your  
8 rights to get royalties, do you?

9 A No.

10 Q In other words, you get royalties based on a contract,  
11 is that correct, specific percentage royalties based  
12 on a contract, has that been your experience?

13 A Sure.

14 Q My question is did you understand on July 15th of 1997  
15 that you had specific contractual percentage rights at  
16 that time in Cogliostro and Medieval Spawn?

17 A You will have to define percentage rights. Do you  
18 mean financially?

19 Q Financial, the right to participate. If you look at  
20 Exhibit 2, I know we are jumping around here, but  
21 these things were all taken together and I think this  
22 is the best way to do it.

23 You list out a series of percentages in that  
24 document, do you not?

25 A Uh-huh.



1 Q Those are royalties, are they not?

2 A Some of them are royalties, some of them are equities,  
3 some of them --

4 Q Character equity, isn't that a royalty as well?

5 A It depends how strictly you want to define the word  
6 royalty.

7 Q Is it a percentage of money you receive based on the  
8 sales of the publication?

9 A Absolutely.

10 Q Is that how you understand the word royalty?

11 A Yes, but it also goes then on into merchandising and  
12 licensing which has nothing to do with sales of a  
13 publication.

14 Q According to this, these figures you have laid out in  
15 Exhibit 2, which is your letter of May 5th of 1997 and  
16 which refers to the "basic DC deal," when you say that  
17 for merchandising and promotional licensing you get 15  
18 percent of publisher's net receipts, are you referring  
19 to a amount of money that the publisher receives from  
20 licensing particular products?

21 A Yes.

22 Q Based on the sale of those products?

23 A Yes.

24 Q So it is a percentage of the publisher's receipts based  
25 on the number of sales of whatever it is, whether it's

1 an action figure or under the other comic's royalties,  
2 it's simply the number of issues sold, correct?

3 A Not necessarily, no.

4 Q What do you mean when I -- I thought this was the  
5 simple part of this question and answer, so --

6 A I'm trying to be helpful.

7 Q I know that, but I'm trying to make it clear here. In  
8 Exhibit 2 you've listed comic's royalties, correct,  
9 creator royalty and writer royalty, right?

10 A Yes.

11 Q You have listed a percentage royalty for collected  
12 editions, trade paperbacks, et cetera, correct?

13 A Uh-huh.

14 Q You have listed some percentages for character equity,  
15 correct?

16 A Uh-huh.

17 Q And those appear to be tied to the numbers of sales of  
18 the comics themselves, correct?

19 A Well, the first one is, yes.

20 Q And then merchandising and promotional licensing, as  
21 you have already testified, that's not related to the  
22 sales of the comic book, but it's related to the  
23 number of sales of the particular product that may be  
24 licensed, correct?

25 A Not necessarily.

1 Q Okay. Explain to me how it might be different?

2 A Well, you do \$100,000 licensing deal for, let's say,  
3 Stardust, something that I did for DC that was  
4 completely creator owned, and the company comes to DC  
5 or comes to me and, came to DC at that point and said  
6 well, we want the rights to do a Stardust T-shirt --

7 Q Can I stop you right there? And I'm sorry I'm doing  
8 this. I want to ask, you made a mention that Stardust  
9 is completely creator owned, is that correct?

10 A Uh-huh.

11 Q Is that a comic book series?

12 A It was a series I did through DC, yes.

13 Q And when you say completely creator owned, what do you  
14 mean by that, is that not a work for hire?

15 A No, it's not for hire.

16 Q So you retained all of the copyright interest in that  
17 work, correct?

18 A Correct.

19 Q And did you get -- did you license DC Comics to do  
20 publication of that, is that how your agreement with  
21 DC Comics was in Stardust and I --

22 A No. I mean, we signed, we essentially signed a  
23 contract with them as you would with any publisher  
24 which gave them certain rights.

25 Q So was that more like a deal you might sign for a

1 novel?

2 A Closer. There is so many comics. Comics bring so  
3 many things to the equation. You have the artist to  
4 deal with. You have a lot more merchandising  
5 categories and so on and so forth.

6 Q But as to the ownership interest in its --

7 A The publisher has no ownership interest of any kind.

8 Q Does the artist get any ownership interest from you  
9 from drawing the pictures that go along with your  
10 script for Stardust?

11 A Absolutely, 50 percent.

12 Q You and the artist created the Stardust --

13 A World.

14 Q -- world and entered into a contract with DC Comics to  
15 publish that, correct?

16 A Yes.

17 Q And as to the ownership interest, you and the artist  
18 agreed that that would be split 50-50, is that  
19 correct?

20 A Uh-huh.

21 Q But that's not the type of deal you are proposing here  
22 for Todd McFarlane in Exhibit 2, correct?

23 A What I'm saying is I'm not basing the figures on --  
24 I'm basing the figures on my standard DC deal at that  
25 time rather than on the kind of deal that I got with a

1 creator on a project like Stardust which were  
2 immensely better.

3 Q I understand. So I'm clear, so we have got your deal,  
4 your proposing terms in Exhibit 2 based on your  
5 standard DC Comics deal, which is what we have already  
6 talked about as evidence here, at least as far as we  
7 know in Exhibits 57 and 58, correct?

8 A Sure.

9 Q Okay. And under that standard deal in Exhibits 57 and  
10 58, you did not retain any ownership rights, those  
11 were work for hire deals, correct, with DC Comics?

12 A Can you repeat the question again?

13 Q Your Sandman contracts with DC Comics, which are the  
14 ones that are being referred to as the standard DC  
15 comic deal or the basic DC deal in Exhibit 2, those  
16 were work for hire agreements, correct?

17 A They are, yes.

18 Q And you have no copyright or trademark or intellectual  
19 property rights in those characters in Sandman,  
20 correct?

21 A No.

22 Q Do you now understand me when I am talking about two  
23 different categories of rights that you might have  
24 when you use the term my rights in Cogliostro and  
25 Medieval Spawn in Exhibit 19? What I'm asking you

1 about is there are rights that you would have by  
2 virtue of being the creator of a work that gets  
3 published, is that correct?

4 A Uh-huh.

5 Q Has that been your experience?

6 A Yes.

7 Q So when you published American Gods and you retained  
8 copyright as creator, you have certain rights as a  
9 copyright holder, correct?

10 A Absolutely.

11 Q You are free to enter into contract on any terms you  
12 can get, is that correct?

13 A Uh-huh.

14 Q And those terms may vary based on the project, who  
15 else is involved, your reputation, et cetera, correct?

16 A Sure.

17 Q Is it your testimony that you believed you retained  
18 the same rights, copyrights, creator rights in Spawn  
19 issue 9, the Angela miniseries, your portion of Spawn  
20 issue 26 and the individual characters Angela,  
21 Cogliostro and Medieval Spawn that you have when you  
22 publish a novel like American Gods?

23 A Sure. They are not exactly the same because obviously  
24 there is an artist involved. We are co-creators.

25 Q You are co-creators and you would receive, based on

1 those creations, you would receive whatever rights,  
2 copyright law, I'm not asking you to make statements  
3 as to what that is, but whatever rights the copyright  
4 law would give you as a creator or whatever rights you  
5 might share with a co-creator, is that correct?

6 A Yes.

7 Q My question now is in addition to your copyrights or  
8 your, if you want to use the term creator rights, what  
9 additional rights, if any, did you believe you had in  
10 Cogliostro and Medieval Spawn on July 15th of 1997?

11 A We have run through a financial interest.

12 Q And what is the financial interest in those two  
13 characters?

14 A Do you want me to answer your first question or is  
15 that a footnote to it? I'm sorry, I was -- you asked  
16 me a question, I was trying to answer.

17 Q Okay. My fault. Let's look back at that exchange for  
18 a second. I asked you in addition to the copyrights  
19 or creator rights, what additional rights, if any, did  
20 you believe you had in Cogliostro and Medieval Spawn.

21 MR. ARNTSEN: Why don't you read  
22 back the start of his answer before you  
23 interrupted.

24 MR. SALSICH: The start of his  
25 answer was we have run through a financial

1 interest, and I answered what is the financial  
2 interest in those two characters.

3 A Good. So we have run through a financial interest,  
4 copyright interest. What was the other one you said  
5 in your original question?

6 Q I said in addition to -- I don't want to talk about  
7 copyright.

8 A No, I know, but you said in addition, I was just  
9 running through the ones that we had already on the  
10 table.

11 Q I just asked you what else you had besides copyright,  
12 or I said creator.

13 A I said I had creator interest and a copyright  
14 interest.

15 Q Excuse me. I do think it's important to interrupt you  
16 here because we have a miscommunication. You used the  
17 term creator rights. I used the term copyright.

18 I don't want to be in a position of asking you to  
19 state a legal conclusion as to what a copyright is or  
20 all the rights intendant to it, but so that we  
21 understand ourselves, in my view we are talking two  
22 categories of rights, we are talking about rights you  
23 get by virtue of being the creator.

24 A Uh-huh.

25 Q I don't think it would be controversial to state that



1 among those rights I think you would agree with me are  
2 copyrights?

3 A Uh-huh.

4 Q Okay. That's one category of rights. I'm not talking  
5 about those.

6 I'm talking about only if you have any additional  
7 rights by virtue of an agreement with Mr. McFarlane or  
8 in any other fashion to Cogliostro and Medieval  
9 Spawn. And let me clarify that again.

10 It's your understanding, is it not, that by  
11 virtue of being the creator of these characters, your  
12 interest in the copyright or the intellectual property  
13 rights that you described would entitle you to receive  
14 financial gain from the exploitation of those  
15 characters, is that correct?

16 A Yes.

17 Q And that whatever that financial gain is, you would  
18 split 50-50 with the artist who was your co-creator,  
19 is that correct?

20 A Uh-huh.

21 Q In addition to that financial gain, in addition to  
22 that financial interest that arrives by virtue of your  
23 being the creator and nothing else, do you believe,  
24 did you believe on July 15th of 1997 that you had any  
25 additional rights, any additional financial interest

1 in Cogliostro and Medieval Spawn?

2 A Did I have an additional financial interest in  
3 addition to the financial interest that I had in them?

4 Q All right. Let's do it this way. That is my  
5 question, but you get a financial interest by virtue  
6 of being the creator, that's your testimony, correct?

7 A Yes.

8 Q It's your understanding?

9 A Yeah.

10 Q And that financial interest derives from whatever  
11 ownership you gained in the intellectual property,  
12 correct?

13 A I think that calls probably for more of a legal  
14 conclusion than I'm prepared to give.

15 Q Your term was intellectual property rights?

16 A Yeah.

17 Q You looked at the DC Comics deal and copyright  
18 trademark and all other rights, correct, those are the  
19 rights that you typically signed away in the DC Comics  
20 deal that you did not sign away with Mr. McFarlane,  
21 correct?

22 A Sure, but DC it's all rights including.

23 Q I understand. Those would be rights that you would  
24 get by virtue of being the creator, correct?

25 A Yup.

1 Q Let's use creator rights because I want it to include  
2 whatever you understand that to be. Earlier you used  
3 the term retained the intellectual property in that,  
4 the ability to get some financial gain from that,  
5 correct?

6 A Yup.

7 Q And you also testified that you would have to split  
8 that, you would get 50 percent of that gain because  
9 you would have to share it with your co-creator,  
10 correct?

11 A Correct.

12 Q Let's assume that amounts to a figure of \$100 --

13 A Uh-huh.

14 Q -- as a result of these characters. Okay?

15 A Uh-huh.

16 Q That's a financial interest that arrives solely as a  
17 result of your being the creator, nothing else. Okay?

18 A Uh-huh.

19 Q Now I want to know if in addition to that \$100 that  
20 you would get because you are a creator, did you  
21 believe when you wrote this letter on July 15th of  
22 1997, that we have marked as Exhibit 19, that you had  
23 a right to obtain additional financial benefit from  
24 these characters or are your rights all tied up in  
25 your being the creator of this --

1 MR. ARNTSEN: Are you talking about  
2 contract rights?

3 MR. SALSICH: Yes, I am, but he has  
4 been unwilling to talk about contracts. I'm just  
5 asking in general.

6 A I'm not willing to talk about anything. I really  
7 don't understand quite what you are getting at here  
8 and I'm really not --

9 Q No, I understand.

10 A I'm sorry.

11 MR. ARNTSEN: Let's go off the  
12 record just a second.

13 (Discussion off the record)

14 Q Right before we broke, and we had a conversation off  
15 the record, I talked with your counsel and I think we  
16 have -- he was helpful to me in trying to understand  
17 your difficulties with my questions and my  
18 difficulties with your answers I suppose.

19 So let's see if we can clarify it this way. You  
20 understand that there are a category of rights based  
21 on the intellectual property based on your creation of  
22 these characters that you believe you retained in the  
23 creations of Cogliostro and Medieval Spawn as of July  
24 of 1997, correct?

25 A That I believe --

- 1 MR. ARNTSEN: Prior to the  
2 agreement, prior to July 15th.
- 3 A Good, prior to that, prior to entering into the  
4 agreement when I handed over all my rights, I believe  
5 that yes, I had rights.
- 6 Q Let's step back because that's an important  
7 distinction. Exhibit 19 is a letter dated July 15th,  
8 1997, correct?
- 9 A Yes.
- 10 Q From you to Mr. McFarlane?
- 11 A Yup.
- 12 Q And in this letter you state that you are, if I  
13 understand correctly, essentially confirming an  
14 agreement that you reached on the telephone earlier  
15 that day, is that right?
- 16 A Absolutely.
- 17 Q And among the things that you agreed to were an  
18 exchange of collective rights, you were going to  
19 exchange rights in Cogliostro and Medieval Spawn in  
20 exchange for Mr. McFarlane giving up rights in  
21 Miracleman, is that correct?
- 22 A Absolutely.
- 23 Q And what I'm simply interested in trying to narrow  
24 down here is the rights that you believed you had in  
25 Cogliostro and Medieval Spawn that in fact you were

1 giving to Mr. McFarlane in exchange for Miracleman.

2 Okay?

3 A Okay.

4 Q And we have talked about one category of rights, and  
5 those were the category of rights that you obtained as  
6 a result of creating these characters, is that your  
7 testimony?

8 A Yes.

9 Q And I'm talking about up until the point that you  
10 wrote this letter, your belief, okay, so we are  
11 talking from the time of creation up until July 15th,  
12 1997. Okay?

13 A Uh-huh. Okay. I think I see what you are getting  
14 at.

15 Q My question is I understand your belief that you have  
16 a right to share in whatever Mr. McFarlane has  
17 received by the use of these characters since you  
18 created them, correct?

19 A Uh-huh, yup.

20 Q Your testimony was that you believed you had a 50-50  
21 split in your rights between you and your co-creator  
22 Mr. McFarlane in these characters, is that correct,  
23 intellectual property rights?

24 A I don't believe I ever said that. I think you are  
25 misremembering.

1 Q Okay. Then let me ask you. Did you believe when you  
2 created these characters, and you were not asked to  
3 sign anything away, that you retained the ownership  
4 interest as a co-creator in those characters?

5 A Yes.

6 Q And did you believe that that ownership interest was  
7 split 50-50 between you and Mr. McFarlane who was the  
8 other co-creator of these characters?

9 A The specifics of ownership interest were never  
10 discussed. I would never have pushed for a 50-50  
11 ownership of Medieval Spawn because I felt it was a  
12 derivative character.

13 He is a derivative character. He is taking what  
14 Todd did and then saying okay, there could be more to  
15 it. So on that, although yes, I did, you know, I was  
16 the creator of the character, I would not have felt  
17 that I was owed a 50 percent share in him. In the  
18 case of Cogliostro, absolutely.

19 Q All right. So let's take Cogliostro then. Is it your  
20 testimony that you believe that as the co-creator of  
21 Cogliostro with Mr. McFarlane, that you were entitled  
22 to a 50-50 share in the financial benefits that were  
23 received from the exploitation of that character?

24 A Yes.

25 Q In addition to the rights you believed that you had in

1 Cogliostro and Medieval Spawn, based on being the  
2 co-creator of those characters, whatever amounts those  
3 are, I want to know if at the time you wrote this  
4 letter, did you believe you were also entitled to  
5 royalties?

6 A Sure.

7 Q And I want to know on what you base that assertion?

8 A Because if I was creating characters at another comics  
9 company, I would get royalties on them.

10 Q But if you were creating characters at another comics  
11 book company, for example, DC Comics, you wouldn't  
12 have creator rights?

13 A Yes, I would.

14 Q They would make you sign those away, correct?

15 A Not at all. Sandman is not creator owned because it  
16 was begun in 1987. In 1987 the world of comics was  
17 just edging very, very fitfully over into, very  
18 nervously into the idea of creator ownership and they  
19 were very uncomfortable with it.

20 Miracleman, which I did over at Eclipse, was  
21 creator owned. I think everything I ever done for  
22 Dark Horse has been creator owned. I have done  
23 Stardust for DC.

24 These days if I went in to do more or less  
25 anything for DC, including if we, at any time over the



1 last decade, if we were starting Sandman now, it would  
2 be a creator owned project. So I'm -- and I'm giving  
3 you that in context because there was a very -- the  
4 few years between 1985 and 1990, maybe 1991 were,  
5 there was an awful lot of change.

6 And one of the reasons why DC Comics was very,  
7 very willing and happy to work with me on everything  
8 was because they still had the, you know, in 1998 I  
9 did my deal with them for a comic which they knew that  
10 if I had come to them in 1990, the people who were  
11 coming into Vertigo, which is an imprint of DC, and  
12 into DC Comics in the nineties, it was all creator  
13 owned and yes, you would get your -- you would keep  
14 your intellectual property share of something and yes,  
15 you would get royalties too.

16 Q Okay.

17 MR. ARNTSEN: Let me go just of the  
18 record just a second, Pete.

19 MR. SALSICH: Sure.

20 (Discussion off the record)

21 (A Short recess is taken)

22 Q Before we took a break, Mr. Gaiman, I know you were  
23 probably getting frustrated with some of my questions  
24 and I was getting frustrated with some of my  
25 questions. So I apologize for contributing to the 4

1 o'clock afternoon frustration, but I think I hope I  
2 can clarify what it was I was trying to get with a few  
3 simple questions and we will try to move on from  
4 there. Okay?

5 A Great.

6 Q We were referring to what's been previously marked as  
7 Exhibit 19.

8 A Uh-huh.

9 Q And this was a letter that you sent on July 15th of  
10 1997?

11 A Uh-huh.

12 Q And we were talking about the sentence, the third  
13 paragraph down, in which you state that you are going  
14 to exchange with Mr. McFarlane your rights in  
15 Cogliostro and Medieval Spawn, correct?

16 A Yup.

17 Q And we did talk about the creator rights or  
18 intellectual property rights that you had by being the  
19 creator of those characters, correct?

20 A Yes.

21 Q And I'm not talking about those now. We also asked a  
22 question if you had any -- if you believed at the time  
23 you wrote this letter that you had any contractual  
24 rights to those characters. Do you recall that  
25 question?

1 A Yeah.

2 Q And I believe you testified that yes, you did by  
3 virtue of the agreement you entered into in 1992 with  
4 Mr. McFarlane, is that correct?

5 A Yes.

6 Q And that's all I really want to clarify. Is it the  
7 1992 agreement with Mr. McFarlane which he said he  
8 will do better than, treat you better than DC Comics,  
9 is that the agreement that you are referring to that  
10 gave you contractual rights to Cogliostro and Medieval  
11 Spawn?

12 A Sure.

13 Q See how easy that was.

14 A Amazingly easy, almost pleasant.

15 Q Mr. McFarlane responded to the letter you sent on July  
16 15th with a letter of his own faxed to you that same  
17 day, did he not?

18 A Yup.

19 Q And is that the letter that we have marked Exhibit 20?

20 A Yup.

21 Q And in that letter from Mr. McFarlane he states, about  
22 half way down, "Before consummating this marriage, I  
23 just need clarification on a few things." Do you see  
24 that?

25 A Yup.

1 Q And then it's my understanding that he lists out three  
2 specific, really three specific questions that he is  
3 uncertain about, is that right?

4 A Yup.

5 Q The first one is an exchange date, correct?

6 A Yup.

7 Q And the second one is a question of whether the  
8 creator royalty was divided by two so that the artist  
9 shares that piece, correct?

10 A Yup.

11 Q And it probably makes sense to refer now to Exhibit  
12 33.

13 A Uh-huh.

14 Q And am I accurate in saying that Exhibit 33 is your  
15 written response to Mr. McFarlane's letter which we  
16 have marked as Exhibit 20?

17 A Yes.

18 Q And in your letter also of July 15th, 1997, which we  
19 have marked as Exhibit 33, you have three numeric  
20 sections corresponding one, two and three to the  
21 questions asked by Mr. McFarlane in his letter that we  
22 have marked as Exhibit 20, is that correct?

23 A Uh-huh.

24 Q And as to the first item, you agree that it's possible  
25 to exchange on July 31st, correct?

1 A Yup.

2 Q And to the second question you clarify that you are  
3 referring to the writer-creator royalty and that the  
4 artist would get his own deal and so that that amount  
5 that you have quoted is the full amount due to you, is  
6 that correct?

7 A Yes.

8 Q Then finally, the third question, and Mr. McFarlane  
9 does not number it, but I think we understand it as  
10 the third question, and you understood it as such when  
11 you wrote a number three next to your answer, correct?

12 A Yup.

13 Q Mr. McFarlane's question in Exhibit 20, his third  
14 question is, and I will quote, "Also, accounting on  
15 the Medieval Spawn will be done with the form you said  
16 DC Comics uses on derivative characters not the  
17 standard agreement of a new hero, is that  
18 acceptable?"

19 And your answer in Exhibit 33 is "Medieval Spawn  
20 accounting, yes, I should have put that in. I formula  
21 him at 50 percent of Angela." Do you see that?

22 A Uh-huh.

23 Q My question for you is about your answer number three  
24 in Exhibit 33. On what formula do you -- how do you  
25 arrive at the figure of 50 percent of Angela for

1 Medieval Spawn?

2 A It seemed right. When DC Comics does it, they do it  
3 as per the contract, on a pro rata discretionary  
4 basis. There is no -- they don't have a, you know, a  
5 specific formula. They make a judgment call.

6 I thought okay, yeah, he is right, let's figure  
7 something out here, half of Angela looks about right,  
8 so.

9 Q Do you have a particular DC contract, DC Comics  
10 contract that you can point to that or that you relied  
11 on that would tell you how to arrive at that 50  
12 percent figure?

13 A Well, I had the negotiation that I had done originally  
14 with DC, which although we eventually wound up with  
15 them deciding to give me 100 percent royalty on  
16 Sandman and me just saying I'm not taking a share of  
17 Destiny, but at that point when I was negotiating with  
18 DC, in Exhibit 47, which would be page 4 of Exhibit 47  
19 --

20 MR. ARNTSEN: Page 2 of the first  
21 contract.

22 A Page 2 of the first contract, they say "Retail  
23 Products and Services: For each product other than a  
24 work and/or for each service produced by publisher and  
25 distributed or rendered by publisher for sale to the

1 public and not by a licensee of publisher, through  
2 publisher's wholesale and retail distribution  
3 channels, a retail product of service, which is based  
4 entirely upon the characters, creative contributor  
5 shall be entitled to receive either, one, an amount  
6 equal to eight-tenths of one percent, .8 percent, of  
7 the suggested retail selling price of such retail  
8 product or service multiplied by its net domestic  
9 sale, or two, if there shall not be a suggested retail  
10 selling price, an amount equal to two and a half  
11 percent, 2.5 percent, of publisher's gross receipts  
12 derived therefrom." And that's the first one for the  
13 full ones.

14 And then it says "Notwithstanding the foregoing,  
15 with respect to the characters of Dream, Sandman and  
16 Destiny only, creative contributor shall be entitled  
17 to receive either, one, an amount equal to  
18 592-thousandths of one percent, .592 percent," which  
19 is about three-quarters of .8 percent, "of the  
20 suggested retail selling price of such retail product  
21 or service multiplied by its net domestic sales, or  
22 two, if there shall not be a suggested retail selling  
23 price, an amount equal to 185-hundredths of one  
24 percent, 1.85 percent, of publishers gross receipts  
25 derived therefrom," which is about three-quarters of

1 2.5 percent.

2 And I actually thought, with this going for 50  
3 percent, I was being very fair and equitable. It  
4 seemed the kind of -- it certainly seemed perfectly  
5 fair.

6 I mean, you know, DC had given me, at one point,  
7 for basically simply including this old character  
8 Destiny of theirs, which is this bloke who wandered  
9 around with a book and a hood and spoke gnomically,  
10 and I just basically said there are these seven people  
11 and here is one of them. And they offered me three-  
12 quarters of what I would have got for one of the, for  
13 a character that I had created simply by virtue of him  
14 being, you know, basically me writing him. And I  
15 thought well, a character that I created derived from  
16 something of Todd's 50 percent seems fair.

17 If you go down to Contingencies Affecting  
18 Royalties on page 4, and I'm sticking with page 47  
19 now, but I think you will find this is exactly the  
20 same if we go to page 58, and I can, to Exhibit 58,  
21 if you are more comfortable with it.

22 Q No, that's fine. I think you are right.

23 A Contingencies affecting royalties, you have spin-offs,  
24 commingling of elements. And in spin-offs, we have  
25 "In the event that publisher uses or licenses the use



1 of a version of any of the characters that publisher  
2 determines consists primarily only of spin-off  
3 elements and is published under a substantially  
4 different title the characters, if published under any  
5 title, or is not substantially as originally created  
6 and written or drawn by creative contributor," so if  
7 the character changes in some way, "then the publisher  
8 shall pay creative contributor royalties based upon  
9 publisher's pro rata allocation of the amounts set  
10 forth in paragraph 1 among all elements used as  
11 created by the creative contributor and all spin-off  
12 elements. The foregoing allocation, and all other  
13 allocations, made by publisher pursuant to this  
14 agreement shall be made in good faith and in  
15 publisher's sole discretion."

16 "As used herein, elements shall include without  
17 limitation characters, stories, themes, titles, names,  
18 logos, devices. Spin-off elements shall mean elements  
19 either, one, not created by creative contributor, or  
20 two, originally created by creative contributor and  
21 later substantially changed or developed by another  
22 party."

23 Then you get into commingling of elements and so  
24 forth.

25 Q Go ahead. Rather than continue reading --

1 A No, I was going to stop at that point.

2 Q How do you see that operating?

3 A I just saw that operating the context here and I had  
4 spoken to somebody at DC Comics, to Terry Cunningham,  
5 as who, bless her, seems to be the place that all of  
6 this seems to come together at some point and said how  
7 does this work, do you have an exact formula and  
8 whatever. And she said "No, no, it's discretionary.  
9 We do it by feel in the seat of our pants and that was  
10 how I did this one." I went fine, it's seat of my  
11 pants.

12 Todd said hey, is there something -- I probably  
13 should have put back in the reply no, there is not an  
14 exact formula, but I thought putting in a formula of  
15 50 percent of Angela, saying this is my thing, if he  
16 had come back 40 percent sounds good or if he had come  
17 back I love you, make it 75 percent, that would have  
18 been fine too.

19 Q Okay. And that's fine. You have answered my question  
20 very fully. I appreciate that.

21 You finish then, at Exhibit 33 you finish with  
22 the statement "Looking forward to getting done with  
23 this"?

24 A Uh-huh.

25 Q Now, earlier you testified that you understood these

1 letters ending with Exhibit 33 to being the agreement  
2 itself, am I incorrect in that?

3 A Yes, absolutely. According to this, I'm saying yes,  
4 we will exchange July 31st and everything is done.

5 The point of the letter on the 1st of August is  
6 July 31st nothing turned up, which is why I send him a  
7 letter saying if this isn't going to happen, let me  
8 know and we can renegotiate.

9 And I get a message no, no, no, we still have a  
10 deal. And a couple of days later everything arrives,  
11 everything they promised from their part of the deal  
12 arrived.

13 Q So let me ask you about that. Mr. McFarlane -- you  
14 said you get a message a couple of days after August  
15 1st that no, no, no, we still have a deal. What was  
16 the nature of that message?

17 A It was -- it wasn't from Todd. Todd was on the road  
18 or somewhere like that, and it was from Sheila or  
19 whoever, I don't remember exactly, saying --

20 Q Somebody from Todd's company?

21 A Todd says everything is fine, we are rushing the stuff  
22 to you, we are finishing up some numbers.

23 Q In fact, you did get some payments from --

24 A And Miracleman film, yes. Sorry I interrupted you.

25 Q No, that's okay. That's all right. You did get

1 payments from McFarlane's company, did you not, in  
2 August?

3 A Yes, I did.

4 Q And you did get the Miracleman film, is that correct?

5 A Yes.

6 Q Did you receive, as far as you know, all of the  
7 physical Miracleman film, items or property that Todd  
8 or his company had?

9 A I don't know. I don't know what they had.

10 Q When you received the physical Miracleman property,  
11 and I'm referring to film and whatever other items  
12 there may have been, did you believe that it was not  
13 complete?

14 A I knew that it wasn't -- well, okay, if you define not  
15 complete as not everything that Todd had, I didn't  
16 know what Todd had. It wasn't the complete set of  
17 Miracleman film, but a phone call from Terry  
18 Fitzgerald either when he sent it off or when I got it  
19 saying that some of the film had been illicitly sold  
20 under the counter by the former owner of Eclipse to  
21 some guy in Toronto who was trying to hold Todd up for  
22 it and they didn't have that stuff.

23 Q And were you not actually contacted by somebody in  
24 Canada prior to Todd's even buying the Eclipse assets  
25 who was saying he had some of the Miracleman stuff and

1 wanted to know if you would do a new issue with him?

2 A No, he never said that. I wish I remembered the guy's  
3 name. I assumed from actually reading a book called  
4 Kimota, which had some interviews and stuff, that  
5 probably this was the same guy, but I may be doing him  
6 a terrible injustice.

7 There was one man who I mentioned before who said  
8 that he was bidding for Miracleman in the Eclipse  
9 auction and wanted to know if Mark Buckingham and I  
10 would be willing to continue the series if he got the  
11 rights to the share of Miracleman that Mark and I did  
12 not have. And I said sure, you know, we wanted to get  
13 on with it, you know, good luck in the auction, but he  
14 never sent me any of that film or anything like that.

15 Q You are not aware and you are not claiming that Todd  
16 McFarlane Productions, or Todd himself or anybody else  
17 who is a defendant in this lawsuit actually held back  
18 some of the physical Miracleman property that they  
19 obtained from Eclipse, are you?

20 A Toward the end of '98 I heard there were rumblings in  
21 the U.K. that Dez Skinn, who was one of the prior  
22 owners of Miracleman -- and I really do understand we  
23 have to finish at five, so let me know how much  
24 Miracleman history --

25 Q My question is simply are you making any specific

1 allegation that any of the McFarlane defendants  
2 withheld physical Miracleman property from you?

3 A Physical Miracleman property, Terry Fitzgerald phoned  
4 me up and wanted to know what I knew about something  
5 called Miracleman Triumphant, which was some kind of  
6 series that Eclipse had been doing toward the end of  
7 Eclipse. I was never clear whether he had any of the  
8 artwork for it or not.

9 And in the late -- in late '98 I sent a fax to  
10 Todd saying I hear some rumblings from the U.K.  
11 saying that Eclipse may not have owned anything after  
12 all, please could you fax me whatever you actually  
13 have in the way of documents that you actually got  
14 from the bankruptcy court, because I realized at that  
15 point that I hadn't received anything from the  
16 bankruptcy court.

17 MR. SIMMONS: Why don't I jump in  
18 here for a second. We got that inventory I think  
19 I used with Terry Fitzgerald. I haven't had Neil  
20 review that.

21 MR. SALSICH: That's fine. We have  
22 gone as far into that as we need to at this point.

23 A And that was why I think they had already warned me  
24 that they didn't have a complete inventory or a  
25 complete film for Miracleman, which is why it says

1           whatever you have.

2           Q   And when you say whatever you have, you are referring  
3           to Exhibit 19?

4           A   Yes.

5           Q   You will include whatever you have in the way of  
6           inventory or film for Miracleman received from Eclipse  
7           in the bankruptcy buyout, correct?

8           A   Uh-huh.

9           Q   You have alleged in this lawsuit that -- hold on. Did  
10          you ever receive a copy of Spawn issue 9?

11          A   Yes.

12          Q   When was that?

13          A   I would have received -- I was first handed one at  
14          Oakland in 1993, I think April of 1993.

15          Q   Right about when it came out?

16          A   Right. It was the day of the publication. Todd and I  
17          were signing them together.

18          Q   What about issue 26, did you ever receive a copy of  
19          that?

20          A   Probably.

21          Q   What about the Angela miniseries?

22          A   Yes. They would have sent me my author copies.

23          Q   Did you ever see the trade paperbacks that were being  
24          published of the Spawn series?

25          A   By the time they were publishing the trade paperbacks,

1 nobody was sending me stuff automatically. Getting  
2 stuff out of Todd was getting harder.

3 Q Do you know who published the trade paperbacks, and I  
4 don't know if they were all published by the same  
5 company, were they all published by Image, do you  
6 know?

7 A As far as I know, the Image I is on the ones. I saw  
8 the most recent one, Angela's Hunt, for the first time  
9 at a convention called Aggicon in Texas several months  
10 ago which was the first time I had seen that in the  
11 flesh and that was definitely published by Image in  
12 2000.

13 Q Do you recall if you ever saw the trade paper, the  
14 second trade paperback, the one that contained issue  
15 9?

16 A I don't think they sent me a copy of that.

17 Q Do you recall if you ever saw it anywhere?

18 A I have seen it certainly since this case started.

19 Q I'm talking back prior to this case starting?

20 A I might have seen one because somebody would have --  
21 at signings people put stuff in front of you, but you  
22 don't actually stop and look at it, you sign it.

23 Q You were doing throughout -- let me ask you this. Was  
24 there any time period in 1993 through 1998 that you  
25 were not actively pursuing your career as a writer of



1       either comic books or novels?

2       A   Yes.

3       Q   When was that?

4       A   Most of 1995 and '96.

5       Q   And what were you doing then?

6       A   I was in the U.K. working on a TV series.

7       Q   Were you still writing?

8       A   I was still writing.

9       Q   During that time?

10      A   But my primary energies were putting together this BBC  
11       miniseries, so I was writing for that and pretty much  
12       out of the comics loop.

13      Q   When was the first time that you recall complaining to  
14       Todd or anybody with any of Mr. McFarlane's companies  
15       about copyright notices not mentioning you on any of  
16       the work that you did for Spawn?

17      A   I'm trying to remember if there ever was a time when  
18       that actually came up specifically.

19      Q   You understand that you have got allegations in your  
20       complaint here that you were not credited with the  
21       copyright in the actual issues that were published,  
22       the Spawn issues that are at issue in this lawsuit, is  
23       that correct?

24      A   Yes. I remember talking with the U.K. with Titan  
25       Books at one point and stating that I wanted to make

1       sure that I was on the book as an author under the  
2       English copyright tax with former rights as an  
3       author. And they said they had to go and check that  
4       with McFarlane and came back that Todd said it was  
5       absolutely fine as long as he was there too.

6       Q Now let me ask you this. The works -- we are not  
7       talking about works that were created in the U.K. We  
8       are talking about works that were created in the  
9       United States, correct?

10      A Uh-huh, but they were --

11      Q When they were published in the U.S., were they the  
12      same books, a publication of the identical product in  
13      the United Kingdom as opposed to something that had  
14      changed between the United States and the U.K.?

15      A My belief is, and unfortunately I don't, I never  
16      stopped to inspect, this is actually sort of figured  
17      out from Amazon.com and things, also from signing,  
18      that the original Angela trade paperback included the  
19      toy, some comic that they put in with the toy which  
20      wasn't by me, it was by Beau Smith. The English one  
21      was completely by me and was a different book.

22      Q I'm not talking about the trade paperback. I'm  
23      talking about the -- well, let me ask you this. The  
24      Angela trade paperbacks and including Angela's Hunt,  
25      the most recent version of it, that's simply a

1 compilation of the Angela miniseries that you  
2 originally did for Todd back in, was it 1994?

3 A Are you asking me if there is any additional material  
4 by me?

5 Q Correct.

6 A I don't know. I never read Angela's Hunt. They never  
7 sent me a copy. Looking at it got too distasteful.

8 Q As far as you are aware, it's simply a collection of  
9 the work you did?

10 A I never read -- I'm not trying to be -- I never read  
11 this stuff through. For all I know they could have  
12 rewritten words all the way through, as far as I know.

13 Q Okay. At what point in time -- or let me step back.  
14 You have alleged that Mr. McFarlane and McFarlane  
15 defendants breached the 1997 agreement, correct?

16 A Uh-huh.

17 Q How did they do that?

18 A Well, I was under the impression that everything was  
19 fine. Even as late as I think March, April, 1988, we  
20 got a healthy royalty payment through, from foreign  
21 stuff, from Mr. McFarlane's wife, actually very nice,  
22 came straight from Wanda, a check for about 4,000.  
23 And I thought great. I didn't think anything of it at  
24 that point, there was anything problematic.

25 And then in the summer I remember talking to the

1 people from DC and from Marvel Comics and saying  
2 great, I'm going to do these comics, do these one  
3 shots, are you interested, do you want to do them.

4 And I think I was looking at trying to decide  
5 between doing an Angela Justice League of America and  
6 an Angela X-Men at Marvel and probably doing a  
7 Medieval Spawn Batman, because I had an idea for  
8 something that would work for that.

9 And I mentioned it to these people and then I  
10 would ring them up later and say what's happening and  
11 they would say Todd is just not calling us back, we  
12 wouldn't be put through to him, which I thought was a  
13 bit odd.

14 And then toward the end of 1998 there had been no  
15 payments of any kind on anything coming in and that  
16 was about the same time that I sent the fax to  
17 Mr. McFarlane saying by the way, can I have a  
18 photocopy of whatever you got, and didn't get anything  
19 from him and then went on tour.

20 And I was on a signing tour for my book  
21 Stardust. And I got to San Francisco, I think it was,  
22 on the tour and got a message from my assistant that a  
23 Fed Ex had just come in from the mail drop. We have a  
24 Minneapolis address and a home address. And it had  
25 come in from there, from Todd McFarlane. And I said

1 great, well, when I get home, I will have to look at  
2 it.

3 I was on this, you know, it was about a 30 city  
4 signing tour, so everything was waiting till it was  
5 done. And then I got home and I looked at this thing  
6 from Todd and it was completely bizarre.

7 It was a letter saying I rescind my previous  
8 offer. I'm going what previous offer, we had a deal,  
9 we said we would exchange on the 31st, we did, you  
10 paid, that was our deal.

11 And then it said and now my new deal that I'm  
12 offering you is this, and my new deal is I keep, I  
13 take Angela back, I give you back Miracleman. I said  
14 you gave me Miracleman, what are you saying here, I  
15 gave -- you are taking back one thing in exchange for  
16 one thing that I held onto.

17 Then he said if we don't have this agreement,  
18 then I'm taking Medieval Spawn royalties out of all  
19 future royalty. I'm going but you already subtracted  
20 20,000 that you paid me for the toy out of what you  
21 paid me for the last thing, you know. We were looking  
22 at, you know, \$1,000 or whatever, I have to see the  
23 exact figures, total of Medieval Spawn toy payment is  
24 \$6,000.

25 And so he is saying I have to recoup that, and

1 whether he stuck with that or not, I don't know. He  
2 may be carefully counting down his recoup, but I  
3 rather doubt it.

4 At that point I -- it was, you know, we are into  
5 February, 1999. I'm off tour. I'm exhausted.  
6 Actually I can tell you, I got off tour on Valentine's  
7 Day because the next day was my sister-in-law Ann's  
8 birthday.

9 So I got back and I was wiped. And I read  
10 through the stuff from Todd and I sent it off to my  
11 lawyer at that point.

12 Q If I understand you correctly, up until you got the  
13 1999 letter, as far as you knew, Todd and his  
14 companies, whoever was involved, had performed all the  
15 things they were supposed to be performing under your  
16 1997 agreement, is that correct?

17 A Yes.

18 Q And all of a sudden in 1999 you receive a letter from  
19 Todd saying we are not going to perform any more, and  
20 I know that's not the language he used, but --

21 A That is very specifically not the language he used.  
22 He said something completely different.

23 Q Well, you said he would rescind, he was rescinding the  
24 offer and he was making a new proposal, correct?

25 A Yes.

1 Q And your understanding was that you had a deal in  
2 1997?

3 A Absolutely.

4 Q And that he had performed his obligation under that  
5 deal up until you got this letter in '99, is that  
6 correct?

7 A Absolutely.

8 Q So was the breach of the 1997 agreement,  
9 Mr. McFarlane's or his companies failure to perform  
10 after, from 1999 on, from early -- from the date you  
11 get the letter on?

12 MR. ARNTSEN: Object to the extent  
13 it calls for a legal conclusion. Also he  
14 testified as to waiting for payments. So I think  
15 there is a confusion there too.

16 Q Well, that's what I'm trying to get figured out here.  
17 As of 1999, early 1999, as far as you knew, had  
18 Mr. McFarlane paid you all the money that was due up  
19 to that point?

20 A As far as I knew at that point, without having audited  
21 them or actually checked the figures, I was very  
22 relieved on the 4th or 5th of August, whenever the  
23 checks arrived, checks arrived, we are done. And I  
24 thought good and I have never to worry about that or  
25 think about that again, cash the checks, put the stuff

1 from Todd into a file and was relieved when the  
2 Miracleman came in.

3 Q So your understanding was that as of the end of August  
4 of 1997, roughly in that point after you had gotten  
5 these checks, that you had gotten the last checks you  
6 were going to get from Cogliostro and Medieval Spawn,  
7 you had gotten the physical materials, whatever they  
8 were, regarding Miracleman and that you were going to  
9 get to do some future projects with Angela and  
10 participate on a royalty basis for whatever happens  
11 with Angela in the future, is that correct?

12 A And do the one-off with Medieval Spawn.

13 Q One-off with Medieval Spawn, okay. And that you were  
14 unable to do the one-off with Medieval Spawn or Angela  
15 because you understood from DC Comics and Marvel that  
16 Mr. McFarlane was not returning their calls regarding  
17 those projects, is that correct?

18 A Yes.

19 Q What are you seeking, and again I'm not asking for  
20 your legal conclusion, but I am asking you what you  
21 are seeking in this lawsuit, if you are seeking to  
22 enforce the terms of the 1997 agreement as you  
23 understand it?

24 A I think that's a very good question.

25 Q Perhaps my first good question all day. Thanks. It



1 didn't take me that long.

2 A The bottom line for me is that I get handed comics,  
3 these trade paperbacks, by kids to sign that I know  
4 that I'm not getting paid a royalty on, nor has  
5 Mr. McFarlane ever intended to pay a royalty on.

6 Q Are you referring to Angela?

7 A The Angela trade paperbacks, the one with Spawn 9 in  
8 it, whatever that's called. Furthermore --

9 Q May I stop you right there?

10 A Yeah.

11 Q And I just want to ask you, as part of the 1997  
12 agreement as evidenced by the letters that you, the  
13 four letters you and Mr. McFarlane exchanged on May  
14 5th and July 15th of 1997, was there some discussion  
15 of --

16 A Do we have the, the one with the figures?

17 (Counsel hands witness document)

18 Q So in the first paragraph, second really paragraph of  
19 Exhibit 19, it says you agree, and you are referring  
20 to Todd, "You agree that with regard to the character  
21 of Angela, her appearances, spin-offs, merchandising  
22 and foreign translations of Spawn 9 or the Angela  
23 miniseries, that you will be using the figures we put  
24 together based on the DC deal"?

25 A Uh-huh.

1 Q So is it your understanding that regarding Angela  
2 and/or Spawn 9, that it's the DC deal and the figures  
3 as evidenced by the May 5th letter and then as  
4 clarified by the July 15th exchange of letters, is  
5 that correct?

6 A Sure, the May 5th letter.

7 Q Right, May 5th letter. And that since January or  
8 February of 1999 you have not received any royalty  
9 payments --

10 A Since March of 1988.

11 Q Okay. Since March of 1998 you have not received any  
12 royalty payments?

13 A Actually since, apart from foreign royalties since in  
14 March of 1988 --

15 MR. ARNTSEN: '98.

16 A Sorry, '98, since August of 1997 I have never received  
17 nothing from Mr. McFarlane of anything he has in print  
18 except in the Spring of 1998.

19 MR. ARNTSEN: 1998.

20 THE WITNESS: What did I say?

21 MR. ARNTSEN: I think you said '88.

22 A Of 1998, the foreign royalty payments. So that's five  
23 years since he has paid royalties on a book that he  
24 has in print.

25 Q So you are still seeking to recover at this point

1 today an accounting of the royalties due for Angela,  
2 Angela's appearances and merchandise, as well as the  
3 Spawn 9, is that correct?

4 A That's certainly part of it.

5 Q Okay.

6 A I mean, one of the things that I would like is a full,  
7 an independent audit and accounting. I may sound  
8 unduly cynical, but I have to say at this point I no  
9 longer trust Mr. McFarlane's accounting skills.

10 And in fact, having looked, over a week ago  
11 having looked over the figures that I actually got, I  
12 realize that they actually have a better relation than  
13 to what we had agreed. And he has sort of cheerfully  
14 gone in and halved things, which I didn't look at the  
15 time. I just said great, he's finally done it and  
16 cashed the check.

17 So I think that making sure that all moneys that  
18 were due previous to the 4th of August, 1997 from a  
19 Cogliostro, Medieval Spawn and Angela are all there  
20 and that all moneys due in after the 4th of August,  
21 1997 from Angela derived things are all there.

22 And the other side of the coin is I'm no longer  
23 certain, one would have to get expert witnesses in to  
24 testify, but in 1997 going on to 1998, maybe even to  
25 1999, the idea of me doing a Medieval Spawn Batman

1 story, for example, would have had some value, that  
2 Medieval Spawn would have brought to the table. The  
3 idea of Angela and the X-Men would have had some value  
4 that Angela would have brought to the table.

5 We are now -- it's now 2002 and frankly Spawn  
6 doesn't sell very well anymore. The comic is a not  
7 very well selling comic. The characters are not very  
8 popular characters.

9 Medieval Spawn is long since forgotten. And the  
10 kids who had bought the toys are now throwing up in  
11 colleges.

12 And, you know, even Angela, he killed her off as  
13 a character in Spawn 100. And although I'm still very  
14 fond of her, I look at it and go how much -- what  
15 would be incredibly attractive to any publisher is me  
16 doing a book, but me doing a book with Medieval Spawn  
17 brings no value to the table.

18 So it might actually be necessary to go well,  
19 okay, what would that have generated if I had done it  
20 at that time and figure it out from there, because  
21 whatever it would generate now, those things don't  
22 bring anything to it, if you see what I mean.

23 And, you know, beyond that, I think Todd and I  
24 would very much like to get shot of each other,  
25 English expression meaning have no more to do.

1 Q I think I followed it.

2 A At this point if we could work out a solution that did  
3 involve, you know, a complete parting of the ways, I  
4 think I would be up for working one of those out, but  
5 that isn't in regard to the 1997 agreement. That's in  
6 regard to having done this lawsuit.

7 MR. ARNTSEN: There may be  
8 something with Miracleman too. I'm not trying to  
9 mess things up, but I thought --

10 A We didn't even mention Miracleman.

11 MR. ARNTSEN: I don't know if you  
12 want to go into that or not.

13 MR. SALSICH: Why don't we take  
14 about two or three minutes. It's 20 minutes to  
15 5. And I will take a quick look and see if there  
16 is anything I actually have to cover before we  
17 finish today and then we will wind it up.

18 (A short recess is taken)

19 Q Mr. Gaiman, we are almost done. I appreciate your  
20 time. I just have a couple of follow-up questions for  
21 you.

22 And I just want to tell you I do apologize for  
23 some of the struggles we had this afternoon in getting  
24 our record together. As I stated at the outset, there  
25 were going to be some times when I didn't understand

1       how your industry worked. And I appreciate your  
2       patience in helping me get to the bottom of things.

3               Again, just a very few follow-ups. You mentioned  
4       requesting information from Titan Books in the U.K.  
5       regarding the copyright notice or the author's notice  
6       on the trade paperbacks being published in the U.K.  
7       Do you recall that testimony?

8       A Yes.

9       Q Can you tell me specifically what it was that you  
10      asked Titan Books for?

11      A I asked Titan Books -- I should add, I never actually  
12      saw what they did until a couple of years ago when I  
13      got them to fax it to me because I had never been sent  
14      a finished copy of the book in question.

15      Q What book was that, if I can interrupt?

16      A The Titan Angela edition. Titan had been in touch  
17      with me about doing an edition of Angela, because they  
18      were buying the rights, and they wanted to know if I  
19      would write a new introduction to it. And I said not  
20      only did I not want to write an introduction to it,  
21      but I felt very uncomfortable about the whole thing  
22      knowing that, because they are my publisher on other  
23      stuff, and knowing that they were buying a book that I  
24      was getting no royalties on.

25      Q What time period are we talking about here?

1 A We have the exchange of letters.

2 Q After you get -- was it after the early 1999 letter  
3 from Todd McFarlane?

4 A Oh, no, before that. We are in late '96, early '97 I  
5 think at this point. We are prior to -- in fact, I  
6 think some of this stuff, my memory of things is that  
7 the May, '97-ish, July, '97-ish is one of the things  
8 that closed it because Todd -- I spoke to Titan and  
9 said, you know, I really don't want you publishing  
10 this until you are assured that I will be getting some  
11 royalties from it.

12 And they wrote a letter to Todd and got a reply  
13 from him saying that he had a deal with me and would  
14 definitely be paying me royalties. So they were  
15 incredibly relieved on that.

16 And I asked for them to make sure that I had the  
17 standard copyright notice that you get in the U.K. --

18 Q What is the standard --

19 A Are you familiar with that?

20 Q No. Tell me what you know about the standard  
21 copyright notice in the U.K.

22 A There is a clause in the U.K. copyright where you get  
23 identified as the author, the copyrights and patents  
24 act, which gives you, you know, your -- it's partly  
25 the moral right and partly you are the author from a

1 copyright purpose, so they put in whatever the  
2 standard. And I just said look, can I have the  
3 standard wording, please.

4 Q And you were familiar with the fact that there was  
5 such a thing as standard wording how?

6 A Because I'm an author in the U.K. and every book I get  
7 of mine would have a standard wording in the front  
8 that would say the right of, you know, Gaiman to be  
9 identified as the author of this book has been  
10 asserted under the copyright and patents act, and so  
11 forth. I got books before with it in.

12 And I thought well, I am the author, can I have  
13 this, please, to Titan. I said I really feel like I  
14 ought to at this point. And they said -- and they put  
15 it in and they said -- and I said I never signed any  
16 of my rights away from this and as far as I'm  
17 concerned I'm certainly the co-copyright holder on  
18 there.

19 And I don't know, I don't even know if they  
20 checked it with Todd or if they put it in and then  
21 Todd complained or something, but it wound up being  
22 changed to the rights of Neil Gaiman and Todd  
23 McFarlane. They phoned me back and said is this okay  
24 and I said yes, it's absolutely fine. So although  
25 Todd hasn't actually -- wasn't actually the artist in



1 the book, that was Greg Capullo.

2 Q You say that you were familiar with the fact that  
3 there was standard language in the U.K., copyright  
4 language in the U.K., because you are an author in the  
5 U.K., is that correct? I mean, it was your experience  
6 as being an author in the U.K. gave you the knowledge  
7 that there was such a thing as standard copyright  
8 language that should be put in books in the U.K., is  
9 that correct?

10 A I had seen it in books before.

11 Q And you are an author -- were you not an author in the  
12 United States at the same time?

13 A Yes, but that language is not language that appears in  
14 the front of American books.

15 Q What do you know about the language that appears in  
16 front of the American books?

17 A Very little, but I know that on some of my stuff I  
18 will actually claim, you know, put specific copyright  
19 notices. I'm just sort of starting to educate myself  
20 now, very much now that this court case has come up.

21 Q But you have been publishing books -- when was the  
22 first time you published a book in the United States  
23 that you held the copyright to, do you know?

24 A You are going to have to define the word publish in  
25 this case.

1 Q When is the first time one of your works was published  
2 in the United States? And when I say your works, I  
3 mean a work that you retain the copyright ownership  
4 to.

5 A I was trying to work out stuff from the U.K. that was  
6 being imported into the U.S.?

7 Q Either way.

8 A First stuff that would have been imported would have  
9 been my book Violent Cases.

10 Q When was that?

11 A 1987.

12 Q Do you recall when the first book that was not  
13 imported from the U.K. but that it was actually  
14 published in the United States as a new work that you  
15 retain the copyright interest in?

16 A Probably a book I did called Don't Panic.

17 Q When was that?

18 A I think it was published in '88.

19 Q 1988?

20 A 1988.

21 Q Not 1888?

22 A Definitely not, I would remember.

23 Q You mentioned doing some signings with, you had done  
24 some book signings with Todd, correct?

25 A No.

1 Q Did you ever do -- you never did a book signing with  
2 Todd?

3 A We signed comics.

4 Q That's what I mean.

5 A I'm sorry.

6 Q My fault, comic book signings.

7 A We did, as I remember, one. There was one signing at  
8 Oakland at a convention called Wondercon, which was  
9 held the weekend of 1993, the same weekend that Spawn  
10 9 came out and --

11 Q I think you mentioned that one.

12 A And I did a mass signing. They had all of the guys  
13 from Image, all of the Image people were there, and  
14 they got me to be one of them for that signing.

15 Q Do you recall doing other signings with or without  
16 Todd McFarlane as to the -- after you had published  
17 the Angela miniseries, for example?

18 MR. ARNTSEN: Signings of?

19 Q Signings of the Angela comic books?

20 A No, didn't do any of those. I mean, people would turn  
21 up at signings. There was -- you have no idea what  
22 people will turn up with at signings, whether it's  
23 Angela comics, rubber toys, body parts, you know, you  
24 are going to be signing them, but I never did a  
25 specific signing tour for the Angela stuff.

1 Q Do you recall if you received -- I think you said you  
2 had got an author's copy of Spawn 9, is that correct?

3 A Yes.

4 Q Do you recall if you got an author copy of Spawn 26?

5 A Don't know.

6 Q You don't recall one way or the other?

7 A I don't recall one way or the other.

8 Q Do you recall if you got an author's copy of the Angela  
9 miniseries?

10 A Yes, I would have got them.

11 Q What about the first Angela trade paperback?

12 A Haven't I testified -- did we do this already?

13 Q I'm not sure if I did. Bear with me.

14 A I don't know on the Angela trade paperback.

15 Definitely didn't see -- I definitely haven't seen  
16 Angela's Hunt, and there was definitely another  
17 version of the Angela trade paperback, I think,  
18 because I have signed, I mean, the trouble with --

19 Q Was it called Pathways to Judgment, does that ring a  
20 bell?

21 A Don't know. I have signed stuff, people put stuff in  
22 front of me at signings and it's been stuff that I  
23 have written. It's been the Angela stuff and I have  
24 never seen it before and it was never sent to me,  
25 there is -- you know, so I can't say.

1           And for some reason, most of this, until we got  
2           to this case, I managed somehow to resist the urge to  
3           go out and buy my own work in order to have copies of  
4           it on my shelves.

5       Q   Would you agree with me that it's possible that some  
6           of these book signings you may have signed a copy of  
7           the Angela miniseries?

8       A   Oh, absolutely.

9       Q   Would it be possible that you signed a copy of the  
10          first Angela trade paperback?

11      A   It's certainly possible that I would have signed  
12          copies because people put them in front of you. You  
13          don't stop to look at the book. You just, you know,  
14          you -- I don't know if you have ever done -- well, if  
15          it was Mike, he would have done that.

16                You have 500 people. You grab the book, you open  
17          it, you sign it. It's very often my impulse with the  
18          Angela stuff, and I may even have done it on a couple  
19          of occasions where I have actually declined to sign  
20          it. People put some of the trade paperbacks in front  
21          of me and I would say I don't get royalties on this.

22      Q   Back in 1994, '95, at that point in time, do you  
23          recall doing signings which you were handed copies of  
24          Spawn 9?

25      A   Yeah.

1 Q Do you recall back --

2 A Todd and I both sign on the cover, we try to get in  
3 the same place because there is one nice white place.

4 Q Do you recall back in 1994, '95 time frame signing any  
5 trade paperbacks, say that trade paperback number 2  
6 which contained issue 9 in it?

7 A I must have signed that at some point, but I, you  
8 know, I go on a book signing tour, the Stardust tour  
9 was 30 cities, one, probably an average of one signing  
10 a day, but several signings were two a day. You have  
11 got somewhere between 400 and 800 people that are  
12 assigning and you put out a rule limiting everybody to  
13 three items a piece --

14 MR. ARNTSEN: Since it's after  
15 five, let's go with I don't recall.

16 A Okay. I'm sorry.

17 Q Give me 30 seconds here.

18 A Sorry.

19 Q No, believe me, you are fine. One last question, or  
20 little issue on the 1997 agreement. And again I know  
21 you heard Todd's deposition in which he explained that  
22 at different times he wears different hats, so to  
23 speak, because he has different roles in the different  
24 companies.

25 Who in your opinion, who in your understanding

1 was the party with whom you made the 1997 agreement?

2 A It was definitely one of the Todds.

3 Q Did you have an understanding one way or the other  
4 of --

5 A No, there was --

6 Q -- how Todd was functioning?

7 A Todd never said to me at any point "Hey, this is Todd  
8 McFarlane president of Image Comics talking to you,"  
9 you know, or "this is Todd McFarlane representing  
10 TMP." It was just "This is, you know, it's Toddy, I  
11 thought about it, okay."

12 Q Whoever, is it your understanding that whoever,  
13 whichever Todd you were negotiating with in 1997 was  
14 the same Todd you made an agreement with in 1992?

15 A As far as I know, you know, I don't even remember if  
16 that fax that came in from him was on letterhead or  
17 whatever, I just -- what was the --

18 MR. LEVIN: July 15th.

19 A Yeah, the July 15th fax.

20 Q Exhibit 20?

21 A It's from Todd McFarlane Productions and Spawn.com  
22 signed Toddy.

23 MR. SALSICH: I think that's all.

24 (5:05 p.m.)

25

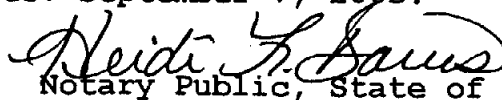
1 STATE OF WISCONSIN

COUNTY OF DANE

2 I, HEIDI L. DAVIS, a Notary Public commissioned and  
3 qualified in and for the State of Wisconsin, do hereby  
4 certify that there came before me on June 24, 2002, at  
5 the offices of LaFollette, Godfrey & Kahn, One East Main,  
6 Madison, Wisconsin, the following named person, to wit:  
7 NEIL RICHARD GAIMAN, who was by me duly sworn to testify  
8 to the truth and nothing but the truth of knowledge  
9 touching and concerning the matters in controversy in  
10 this cause; that the witness was thereupon carefully  
11 examined under oath; that said examination was taken in  
12 shorthand by me and reduced to writing using computer-  
13 aided transcription; that said deposition is a true  
14 record of the testimony given by the witness; that the  
15 witness has not waived reading and signing. I further  
16 certify that I am neither attorney or counsel for, nor  
17 related to or employed by, any of the parties to the  
18 action in which this deposition is taken, and further  
19 that I am not a relative or employee of any attorney or  
20 counsel employed by the parties or financially interested  
21 in the action.

22 In witness whereof I have hereunto set my hand and  
23 affixed my notarial seal June 26, 2002.

24 My commission expires: September 7, 2003.

25   
Notary Public, State of Wisconsin